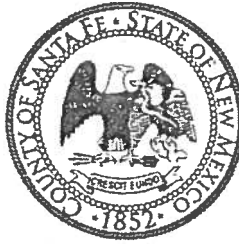


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: February 12, 2014

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager *BT*

VIA: Katherine Miller, County Manager *KM*
Jeff Trujillo, ASD Director
Adam Leigland, Public Works Director
David Sperling, Fire Chief

ITEM AND ISSUE: BCC Meeting February 25, 2014

REQUEST APPROVAL OF AGREEMENT NO. 2014-0152-FD/PL WITH ANISSA CONSTRUCTION FOR THE LA CIENEGA FIRE STATION NO. 2 RENOVATION AND COMMUNITY CENTER/LIBRARY ADDITION IN THE AMOUNT OF \$405,200 EXCLUSIVE OF GRT AND REQUEST AUTHORIZATION FOR THE COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER. (Bill Taylor, Purchasing Division)

Issue:

The La Cienega Fire Station No. 2 located at 136 Camino San Jose in La Cienega, NM currently facilitates three (3) fire truck apparatus. In order to meet Insurance Services Organization (ISO) requirements the facility must be capable to facilitate an additional truck or apparatus. An addition of a Truck Bay and office space will meet this requirement. In addition, the Fire Station is used as a community center. This renovation of the facility will also meet the needs of the Community for a community center/library at this location.

In an effort to address the need to effectively utilize this facility by both the Department and the Community of La Cienega, the Purchasing Division, in conjunction with the County Fire Department issued the Invitation for Bid (IFB) #2014-0152-FD/PL on December 15, 2013 the renovations and improvements to the La Cienega Fire Station No. 2. The solicitation was advertised in two newspapers and posted on the County's website. Twelve (12) contractors attended the mandatory pre-bid conference and the bid opening was held on January 23, 2014. Six bids were received from the following construction companies:

1. Anissa Construction, Albuquerque, NM
2. Longhorn Construction, Albuquerque, NM
3. ESA Construction, Albuquerque, NM
4. Southwest CM, Albuquerque, NM
5. AIC General Contractors, Albuquerque, NM
6. Rock Gap Engineering, Albuquerque, NM

All bids were reviewed for responsiveness by the Purchasing Staff and Anissa Construction was the lowest, responsive bid received.

Background:

The construction includes the addition of approximately 807 square feet Truck Bay as well as the inclusion of the library renovations to the existing 2,128 square foot facility. The work consist of concrete block and foundations, concrete block walls, metal stud walls, stucco exterior finish, new built-up roof, steel windows and doors, and sectional overhead doors. Interior finishes consist of drywall, concrete floor, tile, paint, and acoustical ceilings. Also included is the installation of an oil separator, holding tank and sediment trap, as well as drainage features and parking bumpers.

Recommendation:

The Purchasing Division is requesting approval of Agreement No. 2014-0152-FD/PL with Anissa Construction for the construction services of the La Cienega Fire Station No. 2 renovations and community center/library addition in the amount of \$402,500, exclusive of GRT.



Contract #: 2014-0152-FD/PL

Amendment #: _____

Purchasing Agent: Pamela Lindstam

Telephone Number: 992-6759

SANTA FE COUNTY PURCHASING DIVISION

CONTRACT NAME: ANISSA CONSTRUCTION

THIS FORM IS FOR THE PURPOSE OF ROUTING PROCUREMENT FILES THAT PERTAIN TO SPECIFIC CONTRACTS REQUIRING THE COUNTY MANAGER'S SIGNATURE.

WHEN THE PROCUREMENT FILE IS REVIEWED BY THE COUNTY MANAGER AND THE CONTRACT IS SIGNED, PLEASE NOTIFY THE PURCHASING AGENT LISTED ABOVE TO RETRIEVE THE FILE.

PLEASE COMPLETE APPROPRIATE BOX

	INITIALS	DATE
SUBMITTED TO CMO	<div>PL</div>	<div>2/12/14</div>
RETURNED TO PURCHASING AGENT	<div></div>	<div></div>

Note:

Construction Agreement for the La Cienega Fire Station No. 2 renovations and addition in the amount of \$405,200 exclusive of GRT.

To be captioned on the Feb. 25th BCC meeting for approval.

AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of _____ in the year 2014

BETWEEN the Owner:

(Name, legal status, address and other information)

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

and the Contractor:

Anissa Construction, Inc.
1232 Western Meadows Rd NW
Albuquerque, NM 87114

for the following Project:

2014-0152-FDPL La Cienega Fire Station
136 Camino San Jose, Santa Fe, N.M. 87507
Construct renovations and additions to the La Cienega Fire Station No. 2. The work consists of approximately 807 square feet addition and renovation to the existing 2,128 square foot facility as well as the inclusion of a library, plus site work. The work includes concrete block and concrete foundations, concrete block walls, metal stud walls, stucco exterior finish/re-stuccoing on the existing building, a new built-up roof, steel windows and doors and sectional overhead doors. Interior finishes consisting of drywall, concrete floor, tile, paint, some exposed structure and acoustical ceilings. Equipment and specialties include a cistern, holding tank and oil separator/sediment trap. Site work includes parking bumpers and drainage features.

The Architect:

Risken Associates Architecture
227 E. Palace Avenue
Suite C
Santa Fe, New Mexico 87501

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(1161132655)

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Work to be performed under this Contract shall commence upon the Owner's Issuance of a Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work no later than Ninety (90) working days from the date of commencement.

(Paragraphs deleted) Liquidated Damages in the amount of five hundred dollars (\$500.00) shall be assessed per each weather working day that expires after the date of substantial completion, as adjusted by any change order, until the *(Table deleted)* Owner issues a certificate of substantial completion.

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ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four Hundred Five Thousand Two Hundred Dollars (\$ 405,200.00), exclusive of NM GRT, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(Paragraph deleted)

Additive Alternate #A1	Septic Tank Upgrade – new piping from existing septic tank and new infiltrators	\$ 6,500.00
Additive Alternate #A3	Drainage-Grading at front of station and new asphalt as shown on Sheet C-1	\$12,300.00
Additive Alternate #A4	Gear Locker – Provide and install six lockers (see specification section 10505 for spec and sheet A1.1 for location). Base Bid – provide blocking in walls for locker	\$ 5,000.00
Additive Alternate #A5	Overhang/Portal – see elevation 4 on Sheet A2.0 for location (this detail Refers to a detail of the overhang/portal	\$11,400.00

(Paragraphs deleted)

§4.3 Lump Sum Prices:

Base Bid	\$370,000.00
Additive Alternate #A1	6,500.00
Additive Alternate #A3	12,300.00
Additive Alternate #A4	5,000.00
Additive Alternate #A5	11,400.00
Total	\$405,200.00

(Table deleted)

(Paragraphs deleted)

(Table deleted)

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

Not Applicable

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 21st day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty 21 days after the Owner receives the Application for Payment from the Architect.

Init.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. A copy of the Contractor's most recent schedule of values is attached hereto as Attachment 1.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Subtract the aggregate of previous payments made by the Owner; and
- .3 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Paragraphs deleted)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 21 days after the issuance of the Architect's final Certificate for Payment.

(Paragraphs deleted)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved, the method of binding dispute resolution shall be as follows:

(Paragraph deleted)

Init.

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ Litigation in a court of competent jurisdiction

☐ Other (*Specify*)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

One and one-half percent (1.5%).

§ 8.3 The Owner's representative:

(

Ron Sandoval, Project Manager
Public Works Department
Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

§ 8.4 The Contractor's representative:

Anissa Hogeland
President
1232 Western Meadows Rd, NW
Albuquerque, NM 87114

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

Init.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

Document
Attachment 1 Schedule
of Values

(Table deleted)

(Paragraph deleted)

§ 9.1.4 The Specifications:
Exhibit A Technical Specifications

§ 9.1.5 The Drawings:
Exhibit B DRAWINGS

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum #1	January 2, 2014	18
Addendum #2	January 9, 2014	14

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1

.2 Other documents, if any, listed below:

- a. Contractor's non-collusion affidavit
- b. Sub-contractor's non-collusion affidavit
- c. Contractor's Certification of Equal Employment Opportunity
- d. Sub-contractor's Certification of Equal Employment

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007. Contractor shall also provide and maintain Performance and Payment Bonds each in the amount equal to the Contract sum of Four Hundred Five Thousand and Two Hundred Dollars (\$405,200.00). The bonds shall be issued by a surety authorized to do business in the State of New Mexico and who is approved in Federal Circular 570 as published by the U.S. Treasury Department.

(Table deleted)

Init.

This Agreement entered into as of the day and year first written above.

OWNER

Daniel W. Mayfield, Chair
(Table deleted)
Santa Fe Board of County Commissioners

CONTRACTOR


ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:


Stephen C. Ross, Santa Fe County Attorney 2/10/14
Date

FINANCE DEPARTMENT APPROVAL:


Teresa C. Martinez, Finance Director 2/11/14
Date

Katherine Miller, County Manager Date



AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

2014-0152-FDPL La Cienega Fire Station
136 Camino San Jose, Santa Fe, N.M. 87507

THE OWNER:

(Name, legal status and address)

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

THE ARCHITECT:

(Name, legal status and address)

Risken Associates Architecture
227 E. Palace Avenue
Suite C
Santa Fe New Mexico 87501

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12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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User Notes:

(2019707465)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

(Paragraphs deleted)

§ 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 In the event of conflicts within the Contract Documents, the most restrictive or otherwise most beneficial to the Owner shall apply. Other rules for conflicts within the Contract Documents are:

1. Addenda shall govern all other Contract Documents and subsequent agenda shall govern over earlier addenda;
2. Between drawings and specifications, the specifications shall govern;
3. Within the drawings, a schedule, when identified as such, shall govern over notes or other directions, specific notes shall govern over general notes, dimensions shall prevail over scaled measurements and large scale drawings shall govern over smaller scale drawings.
4. General Conditions shall govern over conflicting portion(s) of other Contract Documents, except as modified by Supplementary Conditions or Addenda.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express

authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraphs deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.3 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.4 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

(Paragraph deleted)

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In exercising the Owner's right to carry out the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of costs incurred.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, or differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

(Paragraph deleted)

§ 3.4.3 After the Contract has been executed, the Owner, Construction Manager and Architect will consider a request for the substitution of products for those specified or permitted by the Contract Documents only under the Conditions set forth in EXHIBIT A TECHNICAL SPECIFICATIONS. If a substitute of products results in increase in the Construction Sum, the limitations set forth in Section 7.3.7 shall govern such cost increase.

In making a request for substitution the Contractor:

1. represents that the Contractor has personally investigated proposed substitute product and has determined that it is equal to or superior in all respects to that specified;
2. represents that the Contractor will provide the same warranty for the substituted product that was required for the specified product;
3. certifies that the cost data represented is complete and includes all related costs under the Contract, including any costs associated with delays in performance of the work occasioned by the substitution, except any review and redesign costs of the Construction Manager and the Architect and waives all claims for additional costs related to the substitution that subsequently become apparent; and,
4. will coordinate the installation of the accepted substitute, including making all adjustments in the Work necessitated by the substitution.

§ 3.4.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 Contractor shall furnish a written warranty of workmanship to the Owner that warrants Contractor's work for minimum period of one (1) year following final completion of the Work.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

(Paragraphs deleted)

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a propose superintendent. The Owner shall reply within ten (10) days to the Contractor in writing. Failure of the Owner or Owner's Project Representative to reply within the ten (10)

day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Contractor's schedule of submittals must provide a workable arrangement acceptable to Owner for reviewing and processing the required submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 This section shall be construed so that the indemnity obligations of the Contractor and those for whom the Contractor may be liable conform to NMSA 1978, Section 56-7-1.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

(Paragraph deleted)

§ 4.1.1 The Owner's Project Manager will provide day to day administration of the Contract and will be the Owner's representative during construction until the date the Owner and Architect issue the final Certificate for Payment. The Owner's Project Manager will have the authority to act on behalf of the Owner to the extent provided in the Contract Documents.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

(Paragraph deleted)

§ 4.2.3 On the basis of site visits, the Owner's Project Manager will keep the Owner informed about the progress and quality of the portion of the Work completed and report to the Owner and deviations, defects or deficiencies observed

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in the Work. The Owner's Project Manager or the Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's Project Representative or Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractor's, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

(Paragraphs deleted)

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Project Manager about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or

performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

(Paragraph deleted)

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(Paragraph deleted)

§ 5.2.1 The Contractor, as soon as practicable after the award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) purposed for each principal portion of the Work. The individuals-persons shall be those identified in the bid submission. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such identified person or entity or (2) that the

Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection.

§ 5.2.3 If the Owner or Architect objects to a person or entity identified by the Contractor, the Contractor shall purpose another to whom the Owner or Architect has no objection.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. Contractor shall not substitute a subcontractor if doing so would violate the Subcontractors Fair Practices Act, NMSA 1978, § 13-4-31 et. seq.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

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§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.
- .4 The allowance for the combined overhead (general administration, overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders and Change directives to the Owners, shall be based on the following schedule:

Entity Performing Work	Cost of Work	
	\$0-\$5,000	\$5,000 and above
Contractor for work performed by his own forces	15%	12%
Contractor for work performed by subcontractor	5%	3%
Subcontractor for work performed by his own forces	10%	7%
Subcontractor for work performed by Sub-subcontractor	5%	3%

§ 7.2.2 No Change Order or Construction Change Directive that changes the Contract Time or Contract Sum are valid and effective until signed by the Santa Fe County Manager or the Santa Fe Board of County Commissioners.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any,

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provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

(Paragraphs deleted)

§ 7.3.8.1 For any Change Order, documentation consisting of itemized supporting data shall be provided, including but not limited to:

- .1 All changes to **labor** must show documentation of the approved hourly rates for the contractor its crew and/or sub-contractors and its crew that are incorporated into the Construction Contract.
- .2 All changes to **materials** must be supported by a copy of the supplier's invoice(s) or quote to the Contractor including actual costs, overhead and profit and other fees and costs applied to the materials.
- .3 All changes to the **Work** or the contractor's duties must be fully justified and explained.
- .4 All changes involving work or supplies provided by sub-contractors must be supported by items 1 – 3 above.

§ 7.3.9 Pending final approval of the total cost of a Construction Change Directive that does not change the Contract Time or Contract Sum, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines in the Architect's professional judgment, to be reasonably justified.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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(Paragraph deleted)

§ 8.1.2 The date of commencement of the Work is the date indicated in the Notice to Proceed issued by the Owner.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The form of Contractor's written Schedule of Values must be acceptable to Owner and it must clearly describe allocation of portions of the Contract Price to component parts of the Work.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Owner shall make payment to Contractor within twenty-one (21) days after the Owner receives a certificate for payment from the Architect.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner..

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within twenty-one (21) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within twenty-one (21) days after the Architect certifies an amount for payment, then the Contractor may upon seven additional days written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount

of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information

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and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall defend and indemnify the Owner against any claims of the Subcontractor.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. The written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

(Paragraphs deleted)

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of New Mexico such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until one (1) year after the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period of correction of work or such other period for maintenance of completed operations coverage and specified in the Contract Documents

(Paragraphs deleted)

§ 11.1.3 The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:

- A. Workers' Compensation:
 1. State: Statutory
 2. Applicable Federal Statutory
- B. Employer's Liability:
 - \$500,000 per Accident
 - \$500,000 Disease, Policy Limit
 - \$500,000 Disease, Each Employee

§ 11.1.4 The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

- \$1,050,000 Each Occurrence
- \$2,100,000 General Aggregate
- \$2,100,000 Personal and Advertising Injury
- \$2,100,000 Products-Completed Operations Aggregate

1. The policy shall be endorsed to have the General Aggregate apply to this Project only.
2. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Paragraph 3.18.

3. Products Completed Operations insurance shall be maintained for a minimum period of at least one year after final payment.

§ 11.1.5 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be \$2,000,000, Each Accident

A. Contractor shall carry insurance to protect itself and Santa Fe County from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result direct or indirectly from or by reason of loss, injury or damage related to the Project. Santa Fe County shall be named as an additional insured to this policy. The Contractor shall file with the Santa Fe County current certificates evidencing public liability insurance with limits not less than as provided in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-29, and as that section or successors section may be amended from time to time. The Contractor shall also carry such insurance as it deems necessary to protect it from all claims under any Workmen's Compensation Law in effect that may be applicable to the Contractor. All insurance required by this Contract shall be kept and remain in full force and effect for the entire life of this Contract.

B. The insurance shall include Worker's Compensation, employer liability, comprehensive general liability (Premises-Operations, independent contractors, products and completed operations, broad form property insurance, contractual liability, explosion and collapse hazard, underground hazard, personal injury) comprehensive automobile liability (owned and hired), excess liability (umbrella form), and all-risk builder's risk.

C. At a minimum, all insurance coverage must be maintained for the life of the Project. Products and complete operations coverage shall be maintained for the minimum period of one (1) year after final payment, a valid certificate of insurance must be submitted to the Owner prior to issuance of Notice to Proceed.

§ 11.1.6 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.7 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in State of New Mexico, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without

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duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.3 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.4 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

(Paragraph deleted)

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of

other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall with approval by the Owner have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located. The exclusive forum for any action arising out of or related to the Agreement shall be the First Judicial Court located in Santa Fe, New Mexico.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraphs deleted)

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

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§ 13.8 APPROPRIATIONS AND AUTHORIZATIONS

§ 13.8.1 This Contract is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Commission and/or if State funds are involved the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Contract shall terminate upon written notice by Owner to Contractor. Such termination shall be without penalty to the Owner, and Owner shall have no duty to reimburse Contractor for expenditures made in the performance of this Contract. Owner is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the Owner. Owner's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Contract shall be final and not subject to challenge by Contractor in any way or forum, including a lawsuit or litigation.

§ 13.9 WAGE RATES

§ 13.9.1 The Contractor shall comply with the Public Works Minimum Wage Act, NMSA, Section 13-4-11 through Section 13-4-42, the substantive provision of which are incorporated by this reference as set forth fully herein.

§ 13.10 SUBCONTRACTORS FAIR PRACTICES ACT

§ 13.10.1 The Contractor shall fully comply with the Subcontractor Fair Practices Act, NMSA, Section 13-4-11 through 13-4-42 the substantive provision of which are incorporated by this reference as set forth fully herein.

§ 13.11 RECORDS AND INSPECTIONS

§ 13.11.1 To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the Owner as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the Owner or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

§ 13.11.2 To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to Owner as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the Owner or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

§ 13.12 EQUAL OPPORTUNITY COMPLIANCE

§ 12.12.1 The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

§ 13.13 NEW MEXICO TORT CLAIMS ACT

§ 13.13.1 No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation to the extent required by NMSA 1978 § 13-4C-4, of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, the parties shall proceed to litigate in New Mexico District Court, First Judicial District.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand

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fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as may be required pursuant to NMSA 1978, § 13-4C-a condition precedent to litigation.

§ 15.3.2 If required by NMSA 1978 the parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

§ 15.4 DISPUTE RESOLUTION

§ 15.4.1 The parties shall engage in mediation in the extent required by NMSA 1978, § 134C-4 (Mediation requirement; exemptions), of the Public Works Mediation Act prior to the institution of litigation.

§ 15.4.1.1 In the event that a claim is not resolved by mediation a party may commence litigation. The parties agree that the exclusion forum for each litigation shall be the State of New Mexico District Court for the First Judicial District located in Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA>

§ 15.4.2 Intentionally Omitted § 15.4.3 Intentionally Omitted

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Intentionally Omitted

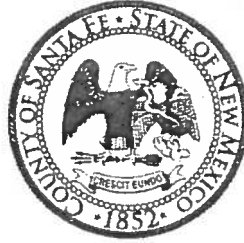
(Paragraphs deleted)



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: February 12, 2014

To: Board of County Commissioners

From: Bill Taylor, Procurement Manager *BT*

Via: Katherine Miller, County Manager *KM*
Jeff Trujillo, ASD Director
Adam Leigland, Public Works Director
Mark Hogan, Projects & Facilities Director

ITEM AND ISSUE: BCC Meeting February 25, 2014

REQUEST APPROVAL OF AGREEMENT NO. 2014-0096-O/PL WITH PARAMETRIX, INC. FOR THE CULTURAL INVESTIGATION AND RESEARCH AT THE THORNTON RANCH OPEN SPACE IN THE AMOUNT OF \$417,477.80 EXCLUSIVE OF GRT-PROCUREMENT/BILL TAYLOR

ISSUE

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2014-0096-OS/PL with Parametrix, Inc. for the cultural investigation and research at the Thornton Ranch Open Space in the amount of \$417,477.80 exclusive of GRT.

BACKGROUND

Thornton Ranch Open Space is a 1,904 acre property that was formerly part of an 18,000 acre working ranch owned by the Thornton family. It includes an additional 435 acres of grazing leases on adjacent Bureau of Land Management and State Trust Lands, bringing the total area that the County manages to 2,339 acres. It is the County's largest open space property.

The property is part of the Galisteo Basin, one of the most significant cultural landscapes in the Southwest. The most distinctive landscape feature on the property is "Petroglyph Hill". The Hill features close to 2,000 petroglyphs ranging in age from the Archaic (1000 B.C.) to the present. The images are a record of the changing cultural landscape in the Galisteo Basin. "Petroglyph Hill" is a significant cultural landmark, recognized as an ancestral site by several tribes in the Rio Grande

Valley and beyond. The site is listed in the Galisteo Basin Archaeological Sites Protection Act. The Thornton Ranch Open space also includes the historic town site of Kennedy, a railroad camp that was the staging ground for the construction of the New Mexico Central Railroad. The Burlington Northern Santa Fe Railway (BNSF) borders the open space property on the south and the New Mexico Central intersected it at Kennedy. Thornton Ranch Open Space offers exceptional opportunities to interpret the cultural landscape and history of the Galisteo Basin in the larger context of northern New Mexico.

The cultural resource investigations are a necessary prerequisite for opening the property to the public. The cultural research will also generate information that can be presented to the public as part of an interpretive program to enhance the visitor's experience of the place.

Due to budget constraints the contract has been divided into two phases. In Phase I the consultant will complete the preliminary cultural resource investigations necessary to inform the concurrent development of a master plan for the property. In Phase II of the contract the consultant will complete the final investigations and reports necessary for the County to obtain clearance from the State Historic Preservation Office to proceed with implementation of the master plan and opening the property to the public.

Upon contract approval by the Board of County Commissioners, staff intends to issue a Notice to Proceed for Phase I only in the amount of \$135,068.80 exclusive of NM GRT. In the event that additional funding is allocated for Phase II during the contract term, staff will give a Notice to Proceed for that phase.

The Purchasing Division issued Request for Proposal (RFP) #2014-0096-OS/PL on October 6, 2013. This solicitation was advertised in the Santa Fe New Mexican and in the Albuquerque Journal and posted on the County's Website. Seven firms attended the mandatory pre-bid conference and the proposals were due on October 31, 2013. Proposals were received from the following five firms:

1. Paramatrix, Inc. Albuquerque, NM
2. Office of Archaeological Studies, State of New Mexico
3. Statistical Research, Albuquerque, NM
4. Sites Southwest, Albuquerque, NM
5. HRA, Inc. Conservation Archaeology, Corrales, NM

All proposals were reviewed by the Purchasing staff to ensure responsiveness. An evaluation committee consisting of three members reviewed and ranked the proposals. Oral presentations were conducted with the two highest ranked firms, Paramatrix, Inc. and the Office of Archaeological Studies. The evaluation committee selected Paramatrix, Inc. as the most qualified to perform the services.

ACTION REQUESTED

The Purchasing Division is requesting approval of Agreement No. 2014-0096-OS/PL with Paramatrix, Inc. for the cultural investigation and research at the Thornton Ranch Open Space in the amount of \$417,477.80 exclusive of GRT.

**PROFESSIONAL SERVICES AGREEMENT
WITH PARAMETRIX, INC. TO PROVIDE
CULTURAL RESOURCE INVESTIGATION
AND RESEARCH
FOR THE THORNTON RANCH OPEN SPACE**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2014 by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), an New Mexico political subdivision, and **PARAMETRIX**, a Washington corporation with a principal address located at 8801 Jefferson NE, Building B, Albuquerque, New Mexico 87113 (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County is in the process of developing a Master Plan for the Thornton Ranch Open Space to include visitor facilities, trails and trailheads which will allow the public to access the property for recreational and educational activities;

WHEREAS, the County requires cultural resource investigations and historic research of the Thornton Ranch Open Space which will be used to inform the master plan;

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 through 13-1-123 of the Procurement Code, a request for proposals was issued and completed through Request for Proposals (RFP) No. 2014-0096-OS/PL for these services;

WHEREAS, based upon the evaluation criteria established within the RFP for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror;

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK; PHASE I AND PHASE II.

The Contractor shall perform and complete the following scope of work in two phases: Phase I and Phase II.

A. The Scope of Work is as follows:

1. Review documents in the County's project files including the Galisteo Basin Archaeological Sites Protection Act General Management Plan;
2. Complete a cultural resource survey of approximately 748 acres that have not been previously surveyed. The 748 acres consist of:

- 1) 95.62 acres of Tract 10 outside of the conservation easement;
 - 2) 36.07 acres included in Parcel A;
 - 3) 167.48 acres in T14N, R9E, Section 33
 - 4) 13.16 acres in the SE ¼ of Section 32;
 - 5) 115 acres within BLM Grazing Lease 00926 Kennedy Allotment NW4 SW4 of Section 29, NW4 SW4 of Section 33, and that portion of NW4 SE4 and NE4 SW4 Section 32 laying north of the railroad tracks;
 - 6) 320 acres within State Land Office Grazing Lease GM 3063 NE4, NE4NW4, S2NW4, NW4SW4 Section 32 14N 09E;
3. Record any rock art not previously recorded by Gary Hein on the SLO Grazing Lease and by Marit Munson at Petroglyph Hill.
4. Complete Historic Cultural Properties (HCIP) forms and a historical study for the Kennedy town site, the New Mexico Central Railroad, the sheep herder's camp on the ridge above the arroyo, the historic structure, spring and windmill along the BNSF Railroad and other historic features to provide the basis for an interpretive program
5. Prepare a final report for submittal to the New Mexico State Historic Preservation Office (SHPO) compiling the data from: a) the cultural resource previously prepared by Dr. James Snead 2004 and 2005 of approximately 1,423 acres, and b) the cultural resource survey Southwest Archaeological Consultants (Rio Grande Foundation for Communities and Cultural Landscapes) conducted of the 168 acre conservation easement on Tract 10.
6. Prepare a Management Plan for Petroglyph Hill under the Galisteo Basin Archaeological Sites Protection Act in consultation with the Galisteo Basin Archaeological Sites Protection Act Working Group as necessary to complete the Management Plan.
7. Coordinate with the County's consultant preparing the Master Plan for the property.

B. PHASE I of the Scope of Work is as follows:

1. Project Management.
2. Background Research.
 - a. Complete record searches at NMCRIS and all other applicable databases and/or locations to obtain all available site records and data.
 - b. Review documents and files of Santa Fe County, Archaeological Sites Protection Act General Management Plan and other pertinent management documents.

- c. Consult with Dr. James Snead and other professionals who have completed investigations in the project vicinity to obtain data not available at ARMS or the County.
 - d. Conduct background research on the archaeology, ethnography, and history of the project area and conduct preliminary GIS analysis and preparation.
 - e. Develop the specific cultural resource categories and definitions that will be used for the landscape approach.
 - f. Submit a Class I cultural resources planning document to Santa Fe County.
3. Archaeological Field Work.
- a. Complete 100% pedestrian survey (using 15-m transect intervals) of the 748 acres of Thornton Ranch Open Space not previously surveyed.
 - b. Document all archaeological sites and cultural resources discovered during pedestrian survey.
4. Historic Built Environment Investigation.
- a. Document all historic built environment resources at the Kennedy town site, the NM Central Railroad, sheepherder's camp, homestead, and other historic sites in the project area.
 - b. Complete a HCPI forms (and online GIS and form uploads) for all applicable resources.
 - c. Conduct preliminary historical research on Kennedy town site and other locations, including identification of potential sources and documents and oral history interviewees.
 - d. Submit a draft historical document to Santa Fe County consisting of a memo summarizing the preliminary historical research and outlining a research plan for Phase II.
5. Ethnographic Investigation.
- a. Coordinate with tribal members with ancestral ties or other interest in the project area and complete background ethnographic research.
 - b. Complete a brief ethnographic overview of Petroglyph Hill and Thornton Ranch.
 - c. Submit an ethnographic memo to Santa Fe County summarizing the ethnographic research, identifying interested tribes and outlining a plan for ethnographic studies for Phase II.
6. Petroglyph Hill Management Plan.
- a. Contractor's consultant TAMARCH will complete background research, conduct a site tour, and conduct tribal, agency, and public consultation associated with the management plan.
 - b. Contractor's consultant TAMARCH will development a management team, management plan meeting agendas, and correspond with members of the management team.
 - c. Contractor's consultant TAMARCH will conduct site tours and management plan meetings.

7. Final Cultural Resources Deliverables for PHASE I.
 - a. Complete site narrative, site maps, and LA site record forms for all newly discovered archaeological sites in the project area.
 - b. Create project area maps that can be used by the County for planning purposes.
 - c. Submit a preliminary report that will summarize survey findings, background research, and previously documented sites; the location of all sites will be shown on project maps, but sites will be presented in summary tabular form.

C. PHASE II of the Scope of Work is as follows;

1. Project Management.
2. Archaeological Field Work.
 - a. Revisit and update all previously documented archaeological sites in the portions of the project area.
 - b. Record all rock art images not previously documented by Gary Hein on the SLO Grazing Lease and Marit Munson at Petroglyph Hill.
3. Historic Built Environment Investigation.
 - a. Complete historical research on the Kennedy town site and other locations initiated in Phase I.
 - b. Conduct oral history interviews with descendants of settlers of the Kennedy town site and other locations in the project area.
 - c. Submit a final comprehensive historical document to Santa Fe County that synthesizes the oral history, archival research and in-field documentation of the Kennedy town site and other locations.
 - d. Produce reader friendly documents for use by the public summarizing the historic resources in the project area.
4. Ethnographic Investigation.
 - a. Conduct tribal meetings and field visits with 2 to 3 tribes.
 - b. Complete mapping of the TCPs or other locations of tribal interest and Native American interpretations will be incorporated into the final cultural resources report.
 - c. Ethnographic findings will be included in the Petroglyph Hill management plan and final cultural resources report.
 - d. A short ethnographic report will be completed and submitted to Santa Fe County.
5. Petroglyph Hill Management Plan.
 - a. Contractor's consultant TAMARCH will develop and circulate a Petroglyph Hill draft management plan.
 - b. Contractor's consultant TAMARCH will incorporate comments following a review period and publish a final Petroglyph Hill management plan. Contractor and TAMARCH will work to incorporate cultural resource findings and Native American interests into the management plan, and

will coordinate with the County's consultant who is completing the Thornton Ranch Open Space Master Plan.

6. Final Cultural Resources Deliverables for PHASE II.
 - a. Complete report chapters (culture history, previous research, interpretive summary, management summary, etc.) and appendices (maps, resource location table, etc.) for submission to Santa Fe County.
 - b. Submit a final comprehensive cultural resources report to Santa Fe County that can be used immediately for planning and consultation with the SHPO.
 - c. Complete reader-friendly documents for the public summarizing the archaeological resources in the project area.

D. PHASES I and II, do not include Contractor's completion of a mitigation plan or implementation of a mitigation plan. The need for mitigation and implementation will be assessed following the Contractor's completion of the cultural resource investigations and the Scope of Work described above.

2. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1 (Scope of Work) of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with industry standards and the aforementioned statutes, for the amount set forth in Section 3 (Compensation) of this Agreement, and for no other cost, amount, fee or expense.
- B. Contractor's description of the services to be provided and their budgeted costs are based on Assumptions regarding the number of archaeological sites and rock art images previously recorded and unrecorded sites or rock art images discovered during the Contractor's investigation; the number of Native Americans and/or Native American tribes that may express interest in during the ethnographic component of the Scope of Work.
- C. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

3. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) PHASE I Services: The County shall pay the Contractor a sum not to exceed one hundred thirty-five thousand sixty-eight dollars and eighty cents (\$135,068.80) exclusive of NM GRT, for services satisfactorily

performed. All costs and expenses shall be in accordance with PHASE I Services indicated below:

Project Management
Background Research
Archaeological Field Work
Historic Built Environment investigation
Ethnographic Investigation
Petroglyph Hill Management Plan
Cultural Resource Deliverables
Direct Costs

TOTAL NOT TO EXCEED FOR PHASE I: \$135,068.80

- 2) PHASE II Services. The County shall pay the Contractor two hundred eighty-two thousand four hundred nine dollars (\$282,409.00) exclusive of NM GRT for services satisfactorily performed. All costs and expenses shall be in accordance with PHASE II Services indicated below.

Project Management
Archaeological Field Work
Historic Built Environment investigation
Ethnographic Investigation
Petroglyph Hill Management Plan
Final Cultural Resource Deliverables
Direct Costs

TOTAL NOT TO EXCEED FOR PHASE II: \$282,409.00

- 3) The total amount payable to the Contractor under this Agreement for **PHASE I and PHASE II shall not exceed Four Hundred Seventeen Thousand Four Hundred Seventy-Seven Dollars and Eighty Cents (\$417,477.80) exclusive of NM GRT.** Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 4) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. The Contractor's request shall include an itemized breakdown of man hours, services and deliverables completed and such services and deliverables shall be consistent with the work tasks described on Exhibits A (PHASE I) and B (PHASE II) attached hereto. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate two (2) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for an additional two (2) years upon the approval of Santa Fe County.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

With this Agreement, the County agrees to Contractor's subcontracting and use of the consulting services of consultant Tamara Stewart, TAMARCH Cultural Resource Management Services, 2891 State Rd. 14, Madrid, NM 87101 for services in the Scope of Work pertaining to the Petroglyph Hill management plan.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

13. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

14. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "Scope of Work", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

15. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

19. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and

upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

20. INDEMNIFICATION

A. The Contractor shall indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's negligent (performance or non-performance) of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

21. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

22. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Attn: Colleen Baker
Open Space and Trails
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Parametrix, Inc.
Attn: Adam Okun

8801 Jefferson NE Bldg. B
Albuquerque, New Mexico 87113

23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.
- C. Contractor is legally registered and licensed to operate as a business in New Mexico and to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

24. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

25. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

26. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage per claim and per aggregate. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional

insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$1,000,000.00 per claim, \$2,000,000.00 per aggregate.

27. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

28. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

30. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints, National Registered Agents, Inc., a New Mexico resident company, located at 123 East Marcy, Santa Fe, N.M. 87501, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract;

INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:

Daniel W. Mayfield, Chairperson
Board of County Commissioners

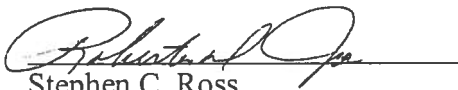
Date

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to Form

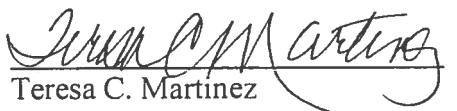


Stephen C. Ross
Santa Fe County Attorney

2/11/14

Date

Approved:



Teresa C. Martinez
Santa Fe County Finance Director

2/11/14

Date

Katherine Miller
Santa Fe County Manager

Date

CONTRACTOR:

(Signature)

Date

(Print Name and title)

FEDERAL ID NUMBER: _____



8801 JEFFERSON NE, BLDG B
ALBUQUERQUE, NM 87113-2718
T. 505.821.4700 F. 505.821.7131
www.parametrix.com

PROPOSED SCOPE AND BUDGET

Date: February 4, 2014
To: Santa Fe County Public Works
From: Adam Okun
Subject: Thornton Ranch Open Space Cultural Resources Investigations Budget/Scope Assumptions
Project Name: Thornton Ranch Open Space

This memorandum summarizes the scope used to create the attached budget spreadsheets (man hours) for cultural resource investigations and historic research at the Thornton Ranch Open Space, a 1,904-acre site in the Galisteo Basin, Santa Fe County, New Mexico. The assumptions below are based on the scope provided within RFP# 2014-0096-OS/PL. However, the tasks in the RFP will now be completed in two distinct phases, and this memo outlines the tasks that will be completed within each phase, as well as the assumptions for each task.

PHASE I

A. Project Management

1. These tasks will be ongoing throughout both phases of the project.

B. Background Research

1. Parametrix will complete record searches at the New Mexico Cultural Resources Information System (NMCRIIS) and all other applicable databases and/or locations, and will obtain all available site records and other data.
2. Parametrix will review all applicable documents and files in the possession of Santa Fe County, as well as the Archaeological Sites Protection Act General Management Plan and other management documents.
3. Parametrix will consult with James Snead and other professionals who have completed previous investigations in the project vicinity to obtain data not available at ARMS or Santa Fe County.
4. Parametrix will conduct general background research on the archaeology, ethnography, and history of the project area and will conduct preliminary GIS analysis and preparation.
5. Parametrix will develop the specific cultural resource categories and definitions that will be used for the landscape approach used throughout the project.
6. Parametrix will submit a stand-alone Class I cultural resources planning document to Santa Fe County.

C. Archaeological Field Effort

1. Parametrix will complete 100-percent pedestrian survey (using 15-m transect intervals) of the 748 acres of the Thornton Ranch Open Space that have not been previously surveyed (as defined in the RFP).
2. Parametrix will document all archaeological sites and other cultural resources discovered during pedestrian survey.

SCOPE AND BUDGET (CONTINUED)

Assumption: We estimate the discovery of approximately 40 new archaeological sites based on site density in the previously surveyed areas. Our budget assumes recording up to 40 sites, and the discovery of additional sites (although unlikely) may require a change order to the contract.

D. Historic Built Environment Investigations

1. Parametrix will document all historic built environment resources (including historic buildings, structures, objects, features, and acequias) at the Kennedy town site, the New Mexico Central Railroad, sheepherder's camp, homestead, and other locations in the project area.
2. Parametrix will complete Historic Cultural Property Inventory (HCPI) forms (and online GIS and form uploads) for all applicable resources.
3. Parametrix will conduct preliminary historical research associated with the Kennedy town site and other locations. This research will include identifying potential sources and documents, conducting a preliminary review of these documents, and identifying potential oral history interviewees.
4. Parametrix will submit a draft historical document to Santa Fe County; this document will be a short memo that summarizes preliminary historic research and outlines a plan for research during Phase II of the project.

E. Ethnographic Investigations

1. Parametrix will coordinate with tribal members that have ancestral ties or other interest in the project area and complete background ethnographic research.
2. Parametrix will complete a brief ethnographic overview of Petroglyph Hill and Thornton Ranch.
3. Parametrix will submit a brief ethnographic memo to Santa Fe County; this memo will summarize preliminary ethnographic research, identify interested tribes, and outline a plan for ethnographic studies within Phase II of the project.

F. Petroglyph Hill Management Plan

1. TAMARCH (Tamara Stewart) will complete background research, conduct a site tour, and conduct tribal, agency, and public consultation associated with the management plan.
2. TAMARH will develop a management team, develop management plan meeting agendas, and correspond with members of the management plan team.
3. TAMARCH will conduct site tours and management plan meetings.

G. Final Cultural Resources Deliverables

1. Parametrix will complete site narratives, site maps, and Laboratory of Anthropology (LA) site record forms for all newly discovered archaeological sites in the Thornton Ranch Open Space project area.
2. Parametrix will create project area maps that can be used by Santa Fe County for planning purposes.
3. Parametrix will submit a preliminary report that will summarize survey findings, background research, and previously documented sites; the location of all sites will be shown on project maps, but sites will be presented in summary tabular form. This will not be a comprehensive final report.

Budget Spreadsheet for Thornton Ranch Oper Gulfst Cultural Resources Investigations: Phase I

Santa Fe County, New Mexico

Parametrix

2/4/2014

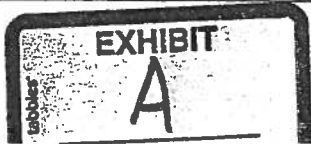
Prepared for Santa Fe County Public Works

WORK TASK	NUMBER OF HOURS										AMOUNT PER TASK
	Employee Name	Okun Adam S Project Manager/ Principal Investigator	Hurt Teresa D Cultural Resources Division Manager	Byzanski, Berenika A. Lead Historian	Stewart, Tamara* Management Plan Specialist	Kelley, Shawn R. Ethnographer	Kalisky, Ethan K. Archaeologist/GIS Specialist	Staff Cultural Resource Technician	Production/Design Specialist	Senior Vice Project Accountant	
A. Project Management											
1. Scoping/Coordination		20	2	4		4				10	
2. Contract Administration										10	
Project Management Total		20	2	4	0	4	0	0	0	10	\$4,468.80
B. Background Research											
1. Record Searches (Databases)											
2. GIS Analysis		8									
3. General Background Research		16		8			24				
4. Resource Type Development		8		8			16				
5. Class I Final Report		40	4	16			8		4		
Background Research Total		72	4	32	0	0	48	0	4	0	\$16,080.40
C. Archaeological Field Effort											
1. GIS Prep/Mobilization		8									
2. Survey/Travel		10					8				
3. Site Recording (40 New Sites)		40					80	160			
Archaeological Field Effort Total		58	0	0	0	0	228	440	0	0	\$47,189.60
D. Historic Built Environment											
1. Preparation/Mobilization				4							
2. Built Environment Documentation				40				40			
3. Preliminary Historic Research				16							
4. HCP Form/Registration				16							
5. Preliminary Historic Document		8		24					2		
6. QA/QC		8									
Historic Built Environment Total		16	0	100	0	0	0	40	2	0	\$14,022.80
E. Ethnographic Investigations											
1. Tribal Consultation						24					
2. Background Ethnographic Research						16					
3. Preliminary Ethnographic Memo		8	4								
4. QA/QC		8									
Ethnographic Total		8	4	0	0	40	0	0	0	0	\$6,342.80
F. Petroglyph Mgmt Management Plan											
1. Background Research/Site Tour					60						
2. Agency/Tribal/Public Consultation					40						
3. Develop Management Plan					40						
4. Management Plan Meeting Agenda					40						
5. Site Tour/Management Plan Meeting					20						
Management Plan Total		0	0	0	200	0	0	0	0	0	\$16,000.00
G. Cultural Resource Deliverables											
1. Preliminary Report		40		8			40				
2. Site Narratives/LA Forms/Site Maps		40					100	60	4		
3. Project Area Maps		8					16				
4. QA/QC		8									
Cultural Resource Deliverables Total		88	4	8	0	0	156	60	4	0	\$26,544.40
Total		262	14	144	200	52	432	540	10	10	
Rate		121	143	97	80	100	70	55	77	97	
Cost		\$11,754.40	\$2,006.20	\$14,011.20	\$16,000.00	\$5,200.00	\$10,240.00	\$29,700.00	\$768.00	\$969.00	
Total Labor											\$130,648.80
OTHER DIRECT COSTS											
Reproduction, Postage, etc											\$1,000.00
Fuel (\$4.4 per mile 2013)											\$2,420.00 based on an estimate of 5500 total miles
ARMS Survey Fee											\$1,000.00 based on a new survey area of 748 acres
Subtotal											\$4,420.00
TOTAL (less gross receipts tax)											\$135,068.80

PROPOSAL

Parametrix
8601 Jefferson NE, Building D
Albuquerque, NM 87113
Tel 505 821 4700

*Note: Tamara Stewart will be working as a subcontractor rather than a Parametrix employee
Note: See attached assumptions





SCOPE AND BUDGET (CONTINUED)

PHASE II

A. Project Management

1. These tasks will be ongoing throughout both phases of the project

B. Archaeological Field Effort

1. Parametrix will revisit and update all previously documented archaeological sites in the portions of the project area that have been previously surveyed. According to the NMCRIS database, at least 204 sites have been previously documented in the project area, although no information about these sites is available.

Assumption: It is here assumed that all previously documented sites will require a site visit and complete update in order to comply with current standards for cultural resource management. Our budget assumes updating up to 204 sites, and the presence of additional sites (although unlikely) may require a change order to the contract.

2. Parametrix will record all rock art images not previously documented by Gary Hein on the State Land Office (SLO) Lease and Marit Munson at Petroglyph Hill. Based on preliminary consultation, the recording of rock art on the SLO Lease was limited and may consist of only locational information and photographs.

Assumption: It is here assumed that previously documented rock art images will not require updating

C. Historic Built Environment Investigations

1. Parametrix will complete historical research associated with the Kennedy town site and other locations initiated during Phase I of the project.
2. Parametrix will conduct oral history interviews with descendants of settlers at Kennedy and other locations in the project area (our team has had success locating dependents for similar studies, but this task will only be completed if applicable subjects are identified).
3. Parametrix will submit a final, stand-alone historical document to Santa Fe County that synthesizes oral history, archival research, and in-field documentation of the Kennedy town site and other locations.
4. Parametrix may produce reader-friendly documents for the general public summarizing the historic resources in the project area. The timing and level of effort for this task will be determined in consultation with Santa Fe County (depending on the type of mitigation that is completed following the completion of other tasks).

D. Ethnographic Investigations

1. Parametrix will conduct tribal meetings and field visits with 2-3 tribes.
Assumption: Although many tribes may express interest, it is here assumed (based on previous experience) that only 2-3 tribes will participate in actual field visits.
2. Parametrix will complete mapping of TCPs or other locations of tribal interest, and Native American interpretations will be incorporated within the final cultural resources report.
3. Ethnographic findings will be included in the Petroglyph Hill management plan and final cultural resources report.
4. A short stand-alone ethnographic report will be produced and submitted to Santa Fe County.

E. Petroglyph Hill Management Plan

1. TAMARCH will develop and circulate a Petroglyph Hill draft management plan.
2. TAMARCH will incorporate comments following a review period and publish a final Petroglyph Hill management plan.

SCOPE AND BUDGET (CONTINUED)

3. Throughout this process, Parametrix and TAMARCH will work to incorporate cultural resource findings and Native American interests into the management plan, and will coordinate with the consultant completing the Thornton Ranch Open Space management plan.

F. Final Cultural Resource Deliverables

1. Parametrix will complete required report chapters (culture history, previous research, interpretive summary, management summary, etc.) and appendices (maps, resource location table, etc).
2. Parametrix will submit a final synthetic and comprehensive cultural resources report to Santa Fe County that can be used immediately for planning and consultation with the State Historic Preservation Officer (SHPO).
3. Parametrix may complete reader-friendly documents for the general public summarizing the archaeological resources in the project area. The timing and level of effort for this task will be negotiated with Santa Fe County (depending on the type of mitigation that is completed following the completion of other tasks).
4. Note: Mitigation is not included within this phase; the need for mitigation and its implementation will be assessed following the completion of the cultural resource investigations included here.

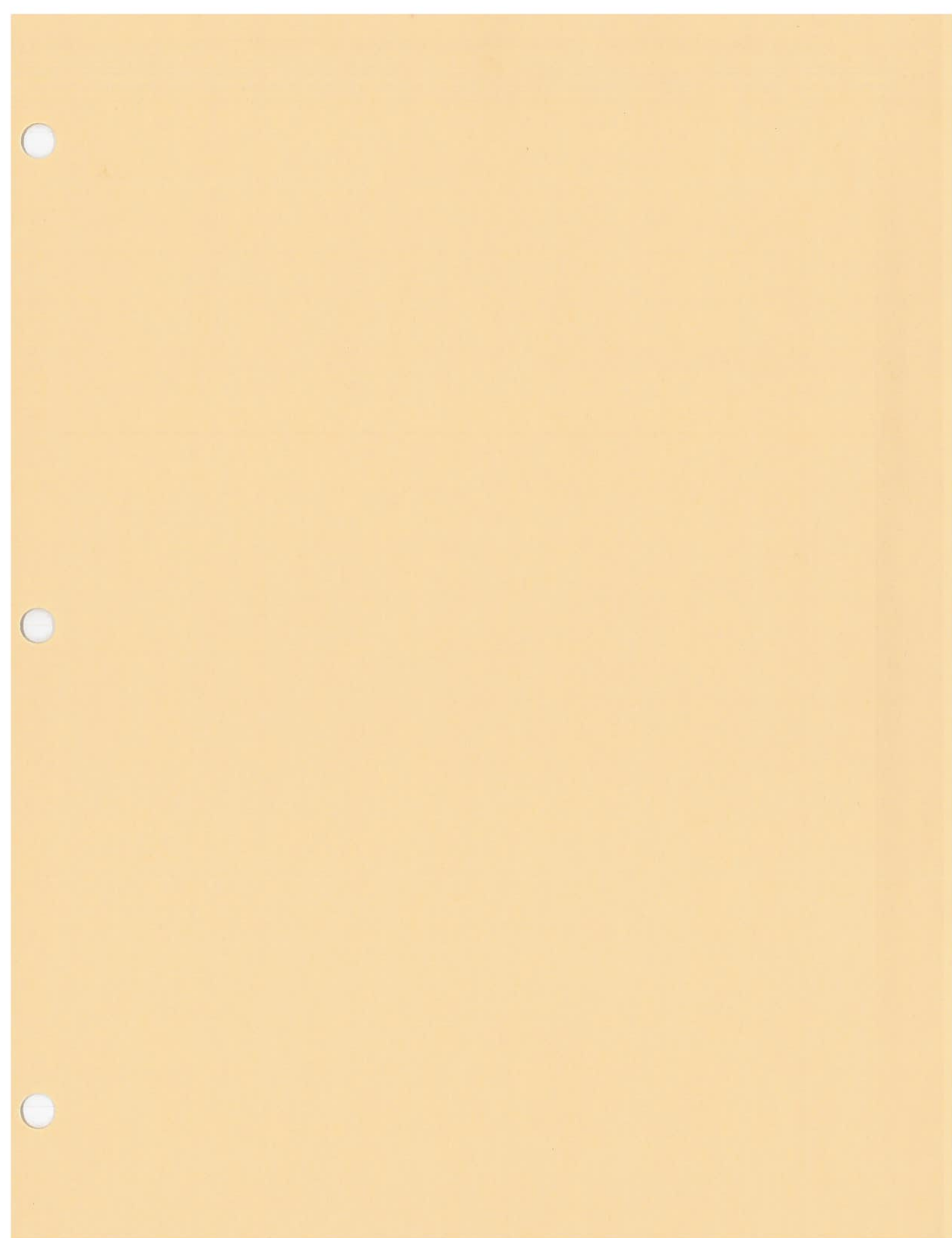
Two separate fee schedules (Phase I and Phase II) with man hours are included with this scope. The cost estimate for Phase I is \$135,068.80; the cost estimate for Phase II is \$282,409.00. We are extremely exciting to be working with you on this project and are ready to initiate these tasks immediately. Again, thank you for this opportunity.

Sincerely,

Adam Okun
Project Manager/Principal Investigator

EXHIBIT
B

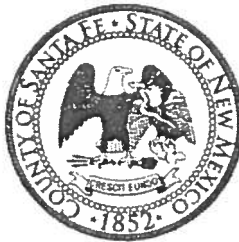
PROPOSAL
TAMM
5501 Jefferson Nt; Building B
Albuquerque, NM 87113
Tel 505 821-4760



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *February 12, 2014*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* *BT*

VIA: *Katherine Miller, County Manager* *KM*
Jeff Trujillo, ASD Director
Adam Leigland, Public Works Director

ITEM AND ISSUE: *BCC Meeting February 25, 2014*

REQUEST APPROVAL OF AWARD OF AGREEMENT # 2014-0175-PW/MS GREATER GLORIETA MDWCA REGIONAL WATER QUALITY AND INFRASTRUCTURE PHASE 1- GLORIETA ESTATES-VILLAGE OF GLORIETA WATER LINE CONNECTION TO DONE RIGHT CONSTRUCTION, LLC., IN THE AMOUNT OF \$515,630.00, EXCLUSIVE OF GRT AND GRANT SIGNATURE AUTHORITY TO THE COUNTY MANAGER TO ISSUE THE PURCHASE ORDER FOR SAID AMOUNT. (BILL TAYLOR/PURCHASING)

Issue:

On January 15, 2014 Santa Fe County Purchasing Division on behalf of the Public Works Department issued an Invitation for Bid (IFB) # 2014-0175-PW/MS Greater Glorieta MDWCA Regional Water Quality and Infrastructure Phase I – Glorieta Estates, Village of Glorieta Waterline Connection. Eight (8) Bids were received on February 4, 2014 from:

Done Right Construction, LLC, Pecos, NM
Desert Utility & Paving, LLC, Albuquerque, NM
File Construction, LLC, Albuquerque, NM
Sasquatch, Inc., Santa Fe, NM
NM Underground Contractors, Inc., Albuquerque, NM
AUI, Inc., Albuquerque, NM
TLC Plumbing & Utility, Albuquerque, NM
Advanced Environmental Solutions, Inc., Belen, NM

Background:

On March 14, 2013, the Santa Fe County Board of County Commissioners unanimously approved a Community Development Block Grant (CDBG) in the amount of \$424,759.00 to install water lines in the Glorieta Community. This grant required a 10% match from the County in the amount of \$42,460.00. On March 26, 2013, The Santa Fe County BCC unanimously approved the Joint Powers Agreement

between the Greater Glorieta Community Regional Mutual Domestic Water Consumers and Sewage Works Association (MDWCA) and The Santa Fe County on the management of the subject project.

The balance of the contract funds after the CDBG grant and the County match will come from the Water Trust Board (WTB) grant awarded to Greater Glorieta MDWCA for the same project in the amount of \$165,832.00. The WTB grant funds will be expensed first, followed by the CDBG funds and then the County match funds.

The subject project will consist of a new 4,300 linear feet of eight inch (8") water line along Avenida Ponderosa; 101 new ¾ inch service connections at each connection for all consumers with water meters and meter boxes equipped for the remote meter reading; automated/remote water meter reading hardware and software; 4 fire hydrants and appurtenances along the new distribution line; ten 8" gate valves and all other construction requirements.

The construction for this project was previously bid under IFB #2013-0246-PW/MS and was awarded by the BCC on 9/10/2013. DFA required that this project be rebid. The second award is to the same firm and the second bid is approximately \$20,000 lower than the original.

Recommendation:

Purchasing Division recommends the Board of County Commission approves and authorizes the execution of the construction contract with Done Right Construction, LLC, for this project in the amount of \$515,630.00, exclusive of NM GRT.



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT
Construction Programs Bureau

Albuquerque Office
5500 San Antonio Dr., NE
Albuquerque, New Mexico 87109
Phone (505) 222-9500 Fax (505) 222-9510
www.nmenv.state.nm.us/cpb
Jim Chiasson, P.E., Chief



RYAN FLYNN
Cabinet Secretary-Designate

BUTCH TONGATE
Deputy Secretary

February 11, 2014

Anna Hamilton, President
Greater Glorieta MDWCA
Via E-mail

**RE: Recommendation of Award for the Greater Glorieta MDWCA Regional Water
Quality and Infrastructure Phase I Project
CDBG 12-C-NR-I-01-G-36, WTB-248, SAP 12-1368-STB**

Dear Ms. Hamilton:

The New Mexico Environment Department (NMED) Construction Programs Bureau (CPB) has reviewed the Bid Tabulation and Recommendation of Award dated February 6, 2014 for the referenced project which were prepared by HDR Engineering and received on February 10, 2014.

The NMED CPB concurs with the recommendation of HDR Engineering to award the construction contract to Done Right Construction in the bid amount of \$515,630.00, excluding NMGR, pending verification by Santa Fe County of all other applicable contract requirements and approval by the other funding agencies, as required. This letter also serves as a recommendation of APPROVAL to the NMFA, as related to the WTB funding.

Please ensure I am notified when the Notice of Award has been issued and the Pre-Construction Meeting has been scheduled.

If you have any questions or comments, please contact me at 505.222.9512 or andrea.telmo@state.nm.us.

Sincerely,

Andrea Telmo, P.E.
Project Manager

cc: Maria Sanchez, Santa Fe County Purchasing Division
Jolene Slowen, Community Development Bureau Chief, DFA LGD
Angela Quintana, Senior Program Administrator, NMFA
Jerome Marez, P.E., Project Manager, HDR Engineering
Chris Rodriguez, P.E., HDR Engineering

AGREEMENT BETWEEN OWNER AND CONTRACTOR

AGREEMENT FORMS - LUMP SUM PRICE OR UNIT PRICE
Section 00510

Contract No. 2014-0175-PW/MS



Distribution to:

- ☐ Owner
- ☐ Contractor
- ☐ Architect/Engineer
- ☐ Finance Dept.
- ☐ CDBG Project Manager

[Disclaimer: Changes and/or modifications made to this document, other than the typical construction items for which the contractor is bidding and/or will contract for, without the written consent of the Local Government Division, DFA shall render this document null and void]

This Agreement entered into this _____ day of _____, 2014, by and between the parties as follows:

THE OWNER:
Santa Fe County
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276

THE CONTRACTOR: Done Right Construction, LLC
11 Ranch De Valencia
PO Box 252
Pecos, NM 87552

Telephone: (505) 986-9866
Fax: (505) 992-9869
E-mail address: polafson@co.santa-fe.nm.us

Telephone: (505) 757-6478
Fax: (505) 757-6478
E-mail address: carlos@donerightconstruction.net

For the following Project: Santa Fe County Greater Glorieta MDWCA Water System Improvements

Project Number: CDBG No. 12-C-NR-I-01-G-36

ARCHITECT/ENGINEER OF RECORD

Jerome Marez, P.E.
HDR Engineering, Inc.

Telephone: (505) 830-5416
Fax: (505) 830-5454
E-mail dress: Jerome.marez@hdrinc.com

RECITALS

WHEREAS, Santa Fe County (Owner) received Federal Funding from NM Department of Finance and Administration, Local Government Division, HUD Community Development Block Grant (CDBG) Program, for water system improvements for Greater Glorieta Mutual Domestic Consumers Association; and

WHEREAS, the Owner, through its Chairman, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 NMSA 1978; and

WHEREAS, the Owner has let this contract according to the established state and local purchasing procedures for contracts of the type and amount let; and

WHEREAS, award of the construction contract on this Project was approved by the Governing Body at its meeting of February 25, 2014;

The OWNER and the CONTRACTOR agree as set forth below.

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of the following:

- Bid Form
- This Agreement
- Performance Bond
- Labor and Material Payment Bonds
- Agent's Affidavit
- Certificate of Insurance
- Assignment of Antitrust Claims
- Table A Subcontracts Breakdown
- Table B Estimated Project Workforce Breakdown
- Contractor Certification Concerning Labor Standards and Prevailing Wage Requirements, Form 1421
- Subcontractor Certification Concerning Labor Standards and prevailing Wage Requirements Form 1422
- Notice of Award
- Notice to Proceed
- Conditions of the Contract (General, Supplementary and Other Conditions)
- Drawings
- Specifications
- All Addenda Issued Prior to and

- All Modifications Issued after Execution of this Agreement
- Federal requirements, certifications and forms required by the CDBG program

These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7 of this Agreement.

ARTICLE 2 THE WORK

2.1 The Contractor shall perform all the Work required by the Contract for the following:
Santa Fe County Greater Glorieta MDWCA Water System Improvements Project

ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The Work to be performed under the contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved not later than Ninety (90) calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

3.2 Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the Contractor agrees, in partial consideration for the award of the Contract, to pay to the Owner the amount of One Thousand Dollars (\$1,000.00) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract, the Contract Sum of Five Hundred Fifteen Thousand Six Hundred and Thirty Dollars (\$515,630.00).

4.2 The Contract sum is determined as follows:

Base Bid	\$ 481,750.00
Alternatives (if any)	\$ 33,880.00
NM GRT	\$ Exclusive of NM GRT
Contract Sum	\$ 515,630.00

ARTICLE 5 PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/ Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract for the period ending the 5th day of the month as follows:

5.2 Not later than twenty-one (21) working days following receipt by the Owner of an undisputed Application for Payment or as stated in Paragraph 25 of the Supplemental General Conditions, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5 NMSA 1978).

5.2.1 When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act refer to Section 57-28-5 NMSA 1978.

ARTICLE 6 FINAL PAYMENT

6.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within thirty (30) calendar days after notification of the Owner by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer and final monitoring and close-out by the Funding Agency. In addition, the Contractor shall provide to the Owner a certified statement of Release of Liens (*AIA Document*

G706.A or approved form) and Consent of Surety.

ARTICLE 7 GENERAL AND SPECIAL PROVISIONS

7.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

7.2 Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.3 As between the parties to this Agreement. As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

7.4 The Contractor shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the Contractor.

7.5 This Agreement shall not become effective until approved by the governing body; and signed by all parties required to sign this Agreement and reviewed by the Funding Agency.

7.6 The Contractor and his agents and employees are independent contractors and are not employees of the Owner. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

7.7 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees from his liabilities and obligations arising from or under this Agreement, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the Contractor may incur.

7.8 The Contractor agrees not to purport to bind Owner to any obligation not assumed herein by Owner

unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7.9 Notices. All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as shown on the title page of this Agreement.

7.10 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

7.11 Gender - Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

7.12 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

7.13 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

7.14 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

7.15 Separability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

7.16 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other

party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

7.17 Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

7.18 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

7.19 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

7.20 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

7.21 Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §§30-14-1, 30-24-2, and 30-41-1 through 3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

7.22 The Contract Documents, which constitute the entire Contract between the Owner and the Contractor, are listed in Article I and, except for Modifications

issued after execution of this Agreement, are enumerated as follows:

7.23 The following documents bound in the Project Manual:

<u>Documents</u>	<u>Pages</u>
Bid Form	4A-21
Agreement between Owner and Contractor	4A-43
Performance Bond	4A-49
Labor and Material Payment Bond	4A-51
Agent's Affidavit	4A-27/55
Certificate of Insurance	4A-41

Assignment of Antitrust Claims	4A-59
Table A Subcontracts Breakdown	4A-
Table B Estimated Project Workforce Breakdown	4A-
Contractor Certification Concerning Labor Standards and Prevailing Wage Requirements, Form 1421	4A-
Subcontractor Certification Concerning Labor Standards and prevailing Wage Requirements Form 1422	4A-
General Conditions	4A-63
Supplementary Conditions	4A-75
Technical Specifications - Division 1-16	

AGREEMENT FORMS DIVISION 0 - SECTION 00500

Approved by the Governing Body at its meeting February 25 , 2014
of _____

OWNER: Santa Fe County

Date: _____

Daniel W. Mayfield, Chair
Santa Fe Board Of County Commissioners

Reviewed:


As to Legal Form and Sufficiency

By: 
Stephen C. Ross

Title: County Attorney

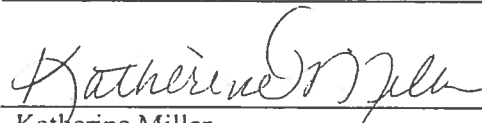
Date: 2/17/14

As to Budget Sufficiency

By: 
Teresa C. Martinez,

Title: Finance Director

Date: 2/17/14


Katherine Miller
County Manager

2.17.14

APPROVED: This Agreement is entered into as of the day and year first written above.

CONTRACTOR: Done Right Construction, LLC

By: _____

Title: _____

Date: _____

Federal Tax ID N°: 582671137

State Tax ID N°: 03061912002

AGENCY CONCURRENCE:

By: _____

Title: _____

Date: _____

Labor and Material Payment Bond Page 4A-54 *MS after BCC meeting*
[Instructions: This page to be replaced by Architect/Engineer with **AIA*
Document A311, form of Labor and Material Payment Bond or similar
documents and labeled as page 4A-51]

[This Page Left Blank]

Performance Bond Page 4A-52 *MS after BCC meeting*

Instructions: This page to be replaced by Architect/Engineer with **AIA Document A311*, form of Performance Bond or similar documents and labeled as pages 4A-49]

[This Page Left Blank]

Rider to Bonds (This Form must be completed and used by Surety) Page 4A 56
MS after BCC meeting

RIDER TO BONDS

BONDS, CERTIFICATES AND NOTICES
Section 00621

This Form Must
Be
Used By Surety

Performance Bond N°. _____ Labor & Material Payment Bond N°. _____

Obligee (Owner): _____

Surety _____

Surety's New Mexico Agent:

Name: _____

Address: _____

Telephone N°. (____) _____

The Surety and Principal stipulate as follows:

Whenever, in the judgment of the Owner, the Surety on this bond shall be insolvent, or for any cause is not a proper or sufficient Surety, the Owner may require the Contractor to furnish a new or additional bond or security within ten (10) days; and thereupon, if the Owner shall so order, security shall be furnished. If such new or additional bond or security is not furnished within said time, the Owner may, at its option, take over and Surety, either doing the Work on force account, or letting the same by contract, and shall be entitled to use any equipment, materials and supplies of the delinquent Contractor in completing said Work.

The Surety hereby stipulates and agrees that no properly authorized Change Order altering Contract Time, Contract Sum, Conditions of the Contract, or the scope of nature of the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive any notice of such change.

Signed and sealed this _____ day of _____, 20__.

(Principal) (Seal)

(Witness)

(Title)

(Witness)

(Surety) (Seal)

(Title)

[This Page Left Blank]

Agent's Affidavit (This Form must be completed and used by Surety) Page
4A-58

[This form must be used for all bonds required in the Bidding Documents,
Power of Attorney for person signing for Surety Company must be attached
to bond. Power of Attorney for person signing for Surety Company must be
attached to bond]

AGENT'S AFFIDAVIT

SUPPLEMENTS TO BID FORMS
Section 00422

[To be filled in by Agent]

This Form Must
Be
Used By Surety

STATE OF _____)
COUNTY OF _____) ss.

_____, being first duly sworn, deposes and says that he/she is the
duly appointed agent for
and is licensed in the State of New Mexico.

Deponent further states that a certain bond given to indemnify the Owner in connection with the construction of
_____ dated the
_____ day of _____, 20____, executed by
_____, Contractor, as principal, and
_____, as surety, signed by this Deponent; and Deponent
further states that said bond was written, signed, and delivered by him/her; that the premium on the same has
been or will be collected by him/her; and that the full commission thereon has been or will be retained by
him/her.

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____,
20_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

[SEAL.]

Agent's Address:

Telephone (____) _____ Fax (____) _____

[This form must be used for all bonds required in the Bidding Documents, Power of Attorney for person signing

for Surety Company must be attached to bond. Power of Attorney for person signing for Surety Company must be attached to bond]

GUARANTY BOND/MAINTENANCE BOND
BONDS, CERTIFICATES, AND NOTICES
Section 00600

GUARANTY BOND NOT APPLICABLE

Section 00630

MAINTENANCE BOND NOT APPLICABLE

Section 00640

(Instructions: This is a listing of forms that are not supplied. If required by the Owner or the Architect/Engineer as part of the Bidding Documents, this page should be replaced by the appropriate forms - special mention under Section 7, Instructions to Bidders, and on the Bid Form, if applicable, should be made by the Architect/Engineer.)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/17/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Commercial West Insurance Agency
7800 Marble NE, Ste#10
Albuquerque, New Mexico 87110

Phone : (505)255-9577
Fax : (505)266-6323

CONTACT NAME: Stephen McCorry

PHONE (A/C, No, Ext): (505)255-9577

FAX (A/C, No): (888)829-0121

E-MAIL ADDRESS: s.mccorry@cwinsure.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Arch Specialty Insurance Company

21199

INSURER B: Peerless Indemnity Insurance Company

18333

INSURER C: New Mexico Mutual Casualty Company

40627

INSURER D:

INSURER E:

INSURER F:

INSURED
DONE RIGHT CONSTRUCTION, LLC
PO Box 252
Pecos, NM 87552

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		12EMP7184903	1/1/2014	1/1/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2,000,000
	AUTOMOBILE LIABILITY		BA5498463	1/1/2014	1/1/2015	PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR					PROPERTY DAMAGE (Per accident) \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					\$
	DED <input type="checkbox"/> RETENTION \$					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		66295.103	5/28/2013	5/28/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

Holder's Nature of Interest : Certificate Holder

Santa Fe County

102 Grant Avenue

Santa Fe, NM 87504

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Assignment of Antitrust Claims Page 4A-62

(To be executed by Suppliers, Subcontractors, and Sub-Subcontractors of
Contractors) *MS after BCC meeting*

ASSIGNMENT OF ANTITRUST CLAIMS

(To be executed by Suppliers, Subcontractors, and Sub-Subcontractors of Contractors)

BONDS, CERTIFICATES, AND NOTICES

Section 00661

**This Form Must Be
Submitted
Within 10 Days of Bid
Award**

Project: _____ Project Number: _____

_____ agrees that any and all claims which it may have or may incur to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the Owner, but only to the extent that such overcharges are passed on to the Owner.

It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Owner, including the right to any treble damages attributable thereto.

Firm: _____

By: _____

Signed by Individual Empowered to Obligate Supplier,
Subcontractor, or Sub-Subcontractor

Title: _____

Date: _____

[This Page Left Blank]

Certificate of Owner's Attorney Page 4A-64 Requirements Page 4A-68 & 69
MS after BCC meeting

CERTIFICATE OF OWNER'S ATTORNEY
BONDS, CERTIFICATES, AND NOTICES
Section 00670

I, the undersigned, _____, the duly authorized and acting
legal representative of the (municipality/county) of _____
do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligation upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Name: _____
Address: _____
Date: _____ Telephone N°. _____ - _____ - _____

TABLE A
PROPOSED SUBCONTRACTS BREAKDOWN

For the Period Covering _____, 20__ through _____, 20__
(Duration of the CDBG-Assisted Project)

[illegible]

* The Project Area is coextensive with the County of Santa Fe's boundaries.

DONE RIGHT CONSTRUCTION, LLC
Company

Project Name GLACIETA MDWCA PHASE 1 Project Number IFB 2014-0175 RJ/MS

Project Name _____ Project Number 2-4-14

EEO Officer (Signature) _____ Date _____

TABLE B
ESTIMATED PROJECT WORKFORCE BREAKDOWN

Column 1	Column 2	Column 3	Column 4	Column 5
Job Category	Total Estimated Positions	Number Positions Currently Occupied by Permanent Employees	Number Positions Not Currently Occupied	Number Positions to be filled with LIPAR*
Officers/Supervisors	2	2	0	0
Professionals				
Technicians				
Housing Sales/Rental Management				
Office Clerical	1	1	0	0
Service Workers				
Others				
TRADE: UTILITIES				
Journeyman	2	2	0	0
Helpers	2	2	0	0
Apprentices				
Maximum Number of Trainees				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				

*Lower Income Project Area Residents. Individuals residing within the County of Santa Fe whose family income does not exceed 80% of the median income of the State.

DONE RIGHT CONSTRUCTION, LLC
Company

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACTOR'S CERTIFICATION
CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

To (Appropriate Recipient): SANTA FE COUNTY

c/o MARIA SANCHEZ

Date 2-4-14

Project Number (if any) IFB 2014-0175 PW/MS

Project Name GREATER GUADALUPE REGIONAL
WATER QUANTITY & INFRASTRUCTURE PHASE I

1. The undersigned, having executed a contract with SANTA FE COUNTY
for the construction of the above-identified project,
acknowledges that:

- (a) The Labor Standards provisions are included in the aforesaid contract;
- (b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility;

2. He certifies that:

- (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).
- (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:

- (a) The legal name and the business address of the undersigned are:

< DONE RIGHT CONSTRUCTION, LLC
< PO Box 252
< PEECOS NM 87552

- (b) The undersigned is:

☐ (1) A SINGLE PROPRIETORSHIP

☒ (3) A CORPORATION ORGANIZED IN THE
STATE OF NEW MEXICO

☐ (2) A PARTNERSHIP

☐ (4) OTHER ORGANIZATION (Describe)

- (c) The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS
< <u>RUDY SEGURA</u>	<u>OWNER/MANAGER</u>	<u>11 RAMIRO DE VILLANUA</u>
< <u>LEON M. SEGURA</u>	<u>OWNER/MANAGER</u>	<u>PEECOS, NM 87552</u>
< <u>CARLOS SEGURA</u>	<u>MANAGER</u>	<u>6747 LAMY ST NW ALBU, NM 87120</u>

HUD-1421 (6-75)

- (d) The names and addresses of all other persons, both natural and Corporate, having a substantial interest in the undersigned, and the nature of the interest are (If none, so state):
- | NAME | ADDRESS | NATURE OF INTEREST |
|------|---------|--------------------|
|------|---------|--------------------|

<

NONE

<

<

<

- (e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (If none, so state):
- | NAME | ADDRESS | TRADE CLASSIFICATION |
|------|---------|----------------------|
|------|---------|----------------------|

<

NONE

<

<

<

DONE RIGHT CONSTRUCTION, LLC
(Contractor)

Date

2-4-14

By

CARLOS

WARNING

U.S. Criminal Code, Section 1010, Title 18, U.S.C., provides in part: "Whoever . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACTOR'S CERTIFICATION
CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

To (Appropriate Recipient):

c/o

Date 2/13/14

Project Number (If any) 12-C-NR-I-01-G-36

Project Name Glorieta Utilites Chipseal

1. The undersigned, having executed a contract with GM Emulsion, LLC for the construction of the above-identified project, acknowledges that:
- (a) The Labor Standards provisions are included in the aforesaid contract;
 - (b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility;

2. He certifies that:
- (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).
 - (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:
- (a) The legal name and the business address of the undersigned are:
<
< GM Emulsion, LLC
<
<
 - (b) The undersigned is:
☐ (1) A SINGLE PROPRIETORSHIP ☐ (3) A CORPORATION ORGANIZED IN THE STATE OF < New Mexico
☐ (2) A PARTNERSHIP ☐ (4) OTHER ORGANIZATION (Describe)

- (c) The name, title and address of the owner, partners or officers of the undersigned are:
- | NAME | TITLE | ADDRESS |
|------|-------|---------|
|------|-------|---------|

Gabriel Martinez	President	47 Paseo De Martinez Santa Fe, NM 87507
Michelle Martinez	Vice President	47 Paseo De Martinez Santa Fe, NM 87507

HUD-1421 (6-75)

- (d) The names and addresses of all other persons, both natural and Corporate, having a substantial interest in the undersigned, and the nature of the interest are (If none, so state):

NAME	ADDRESS	NATURE OF INTEREST
------	---------	--------------------

<

< NONE

<

<

-
- (e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (If none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION
------	---------	----------------------

<

< NONE

<

<

GM Emulsion, LLC

(Contractor)

2/13/14

Date

By

WARNING

U.S. Criminal Code, Section 1010, Title 18, U.S.C., provides in part: "Whoever . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

Division 18

**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

GENERAL CONDITIONS OF THE CONTRACT

Section 00700

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1. Contract and Related Contract Documents	26. Acceptance of Final Payment as Release
2. Definitions	27. Payments by Contractor
3. Additional Instructions and Detail Drawings	28. Insurance
4. Shop/Setting Drawings	29. Contract Security
5. Materials/Services/Facilities	30. Additional/Substitute Bond
6. Contractor's Title to Materials	31. Assignments
7. Inspection/Testing of Materials	32. Mutual Responsibility of Contractors
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10. Survey/Permits/Regulations	35. Architect/Engineer Authority
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19. Time for Completion and Liquidated Damages	44. Protection of Lives/Health
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21. Subsurface Conditions Found Different	46. Interest of Congressmen
22. Claims for Extra Cost	47. Other Prohibited Interests
23. Right of Owner to Terminate	48. Use Prior to Owner's Acceptance
24. Construction Schedule/Periodic Estimate	
25. Payments to Contractor	

1. Contract and Contract Documents

1.1 The project to be constructed pursuant to this contract will be financed with the assistance of the New Mexico Small Cities Community Development Block Grant Program and is subject to all applicable federal and state laws and regulations. State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code."

1.2 The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement

policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

1.3 The plans, specifications and addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. Definitions

The following terms as used in this contract are respectively defined as follows:

2.1 *Contractor* is a person, firm or corporation with whom the contract is made by the Owner.

2.2 *Subcontractor* is a person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.

2.3 *Work on (at) the project* is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.

3. Additional Instructions and Detail Drawings

3.1 The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with progress of the work.

4. Shop or Setting Drawings

4.1 The Contractor shall submit promptly to the Architect/Engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/Engineer with two corrected copies. If requested by the Architect/Engineer the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer, the Contractor will never the less be responsible for the accuracy of

such drawings and for their conformity to the Plans and Specifications, unless he notifies the Architect/Engineer in writing of any deviations at the time he furnishes such drawings.

5. Materials, Services, and Facilities

5.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

5.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Owner.

6. Contractor's Title to Materials

6.1 No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

7. Inspection and Testing of Materials

7.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract.

7.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

8. "Or Equal" Clause

8.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or

vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

9. Patents

9.1 The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

9.2 License or Royalty Fees. License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not be or through the Contractor.

9.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

10. Surveys, Permits, and Regulations

10.1 Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the

Contractor all surveys necessary for the execution of the work.

10.2 The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.

10.3 The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

11. Contractor's Obligations

11.1 The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required.

11.2 The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the Owner.

12. Weather Conditions

12.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

13. Protection of Work and Property-Emergency

13.1 The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the contract or by the Owner, or his duly authorized representatives.

13.2 In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. He shall notify the Architect/Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer for approval.

13.3 Where the Contractor has not taken action but has notified the Architect/Engineer of an emergency threatening injury to persons to damage to the work or any adjoining property, he shall act as instructed or authorized by the Architect/Engineer.

13.4 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 17 of the General Conditions.

14. Inspection

14.1 The authorized representatives and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

15. Reports, Records, and Data

15.1 The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this contract.

16. Superintendence by Contractor

16.1 At the site of the work the Contractor shall employ a construction superintendent or foreman who

shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

17. Changes in Work

17.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner and funding agency. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- A. Unit bid prices previously approved.
- B. An agreed lump sum.
- C. The actual cost of:
 - 1. Labor, including foremen;
 - 2. Materials entering permanently into the work;
 - 3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
 - 4. Power and consumable supplies for the operation of power equipment;
 - 5. Insurance;
 - 6. Social Security and old age and unemployment contributions.

17.2 To the costs under 17.1 there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

18. Extras

18.1 Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner or its Architect/Engineer, acting officially for the Owner, and the price is stated in such order.

19. Time for Completion and Liquidated Damages

19.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract: and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

19.2 The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

19.3 If the said Contract shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.

19.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

19.5 It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any

excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

A. To any preference, priority or allocation order duly issued by the Government;

B. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

C. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections a) and b) of this article:

19.6 Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

20. Correction of Work

20.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer shall be equitable.

21. Subsurface Conditions Found Different

21.1 Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such changes in the Plans and/or Specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 17 of the General Conditions.

22. Claims for Extra Cost

22.1 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 17.3 of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.

23. Right of the Owner to Terminate Contract

23.1 In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract; Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract or by force account for the

account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

24. Construction Schedule and Periodic Estimates

24.1 Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

25. Payments to Contractor

25.1 Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract as follows:

A. Not later than twenty-one (21) working days following receipt by the Owner of an undisputed Application for Payment or as stated in Paragraph 3 of the Supplemental General Conditions, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment.

less the aggregate of previous payments made by the Owner; and less such amounts as the Architect/Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

B. When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act refer to Section 57-28-5 NMSA 1978.

25.2 In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

25.3 All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.

25.4 Owner's Right to Withhold Certain Amounts and Make Application Thereof: The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner

shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

26. Acceptance of Final Payment Constitutes Release

26.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond.

27. Payments by Contractor

27.1 Contractors and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay his subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to his subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).

28. Insurance

28.1 The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

28.2 Compensation Insurance. The Contractor shall procure and shall maintain during the life of

this contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of this employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

28.3 Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.

28.4 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either 1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions specified in subparagraph 28.3 hereof or, 2) insure the activities of his policy, specified in subparagraph 28.3 hereof.

28.5 Scope of Insurance and Special Hazards. The insurance require under subparagraphs 28.3 and 28.4 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated in the Supplemental General Conditions.

28.6 Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the Owner, the Owner, or Contractor [at the Owner's option as indicated in the Supplemental General Conditions, Form HUD-4238-N] is required to

maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from his obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.

28.7 Proof of Carriage of Insurance. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Owner."

29. Contract Security

29.1 The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this contract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.

30. Additional or Substitute Bond

30.1 If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made

until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

31. Assignments

31.1 The Contractor shall not assign the whole or any part of this contract or any moneys due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any moneys due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this contract.

32. Mutual Responsibility of Contractors

32.1 If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

33. Separate Contract

33.1 The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Architect/Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

34. Subcontracting

34.1 The Contractor may utilize the services of specialty subcontractors on those parts of the work

which, under normal contracting practices, are performed by specialty subcontractors.

34.2 The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.

34.3 The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

34.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

34.5 Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

35. Architect/Engineer's Authority

35.1 The Architect/Engineer shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

35.2 The Architect/Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Architect/Engineer.

36. Stated Allowances

36.1 The Contractor shall include in his proposal the cash allowances stated in the Supplemental General Conditions. The Contractor shall purchase the "Allowed Materials" as directed by the Owner on the basis of the lowest and best bid of at least three competitive bids. If the actual price for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the contract price shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

37. Use of Premises and Removal of Debris

37.1 The Contractor expressly undertakes at his own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition.
- F. to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer, not to cut or otherwise alter

the work of any other Contractor.

38. Quantities of Estimate

38.1 Wherever the estimated quantities of work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

39. Lands and Rights-of-Way

39.1 Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this contract.

40. General Guaranty

40.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

41. Conflicting Conditions

41.1 Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

42. Notice and Service Thereof

42.1 Any notice to any Contractor from the Owner relative to any part of this contract shall be in

writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

43. Provision Required by Law Deemed Inserted

43.1 Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

44. Protection of Lives and Health

44.1 "The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction; as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary."

45. Subcontracts

45.1 "The Contractor will insert in any subcontracts the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development may, by instructions require, and also a clause requiring the subcontractors to include these clause requiring this insertion in any further subcontracts that may in turn be made. The contractor will require all subcontractors any further subcontracts to complete form 1422 (Subcontractor Certification Concerning Labor Standards and Prevailing Wage Requirements)"

45.2 The Contractor ultimately will be held responsible for any federal Labor Standards Provisions violations

committed by subcontractors or any further subcontractors.

45.3 It is the contractor's responsibility to provide the owner an updated listing of subcontractors or any further subcontracts (Table A) within 10 days of the award.

46. Interest of Member of or Delegate to Congress

46.1 No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

47. Other Prohibited Interests

47.1 No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

48. Use and Occupancy Prior to Acceptance by Owner

48.1 The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.

B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or,

C. When the project consists of more than one

building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

MODIFICATIONS TO GENERAL CONDITIONS
SUPPLEMENTARY CONDITIONS
Section 00700

1. Paragraph 17 is amended to add new sub-paragraph. Paragraph 17 is amended to add new sub-paragraphs 17.3 through 17.6 to read:

17.3 The Contractor must submit in writing any request for any modifications to the plans and specifications. Shop drawings that are submitted to the Architect/Engineer for review do not constitute "in writing" unless it is brought to the attention of the Architect/Engineer that specific changes are being proposed. In any event, the responsibility for proposing changes to the plans and specifications by means of shop drawings resides with the Contractor and no additional costs resulting from such changes will be paid to the Contractor.

17.4 All change orders will include the total added (or deducted) cost to the Owner, including gross receipts tax. The Owner must approve any increase or decrease to the Construction Cost.

17.5 All change orders will be approved by the funding agency (Local Government Division, DFA) before taking effect. Any additional project costs (including GRT) approved by the Owner without LGD approval, shall become the sole responsibility of the Owner.

17.6 Any party that becomes aware of an expected project cost over-run, will notify the Owner immediately. The Owner will notify the Funding Agency. If funding is not already in place to cover the entire over-run, the owner and Architect/Engineer will: 1) amend the scope of work to bring the project back within budget, 2) secure additional and timely funding to cover the entire over-run or 3) deny approval of the change order.

2. Add the following sentences at the end of Paragraph 28.6:

Certificates of insurance acceptable to the Owner shall be filed with the Owner within ten (10) days after receipt of the Notice of Award. These certificates shall contain a provision that coverage's afforded under the policies will not be cancelled unless a least thirty (30) days prior written notice has been given to the Owner. A copy of the Builder's All-Risk Policy, if required, shall be provided to the Owner before any portion of Work is commenced by the Contractor. The original Owner's Protective Liability Insurance Policy shall be provided to the Owner before any portion of the work is commenced by the Contractor.

3. Paragraph 28 is amended to add a new subparagraph 28.7 to read:

28.7 Payment of Damages. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operation under this contract.

4. Paragraph 29 is amended to add a new subparagraph 29.1 to read:

29.1 A claimant is further defined as set forth in Sections 13-4-18 through 13-4-20 NMSA 1978. The security is bound by the provisions of Sections 13-4-18 through 13-4-20 NMSA 1978.

***If the Architect/Engineer must make changes to the General Conditions of this contract they must be included here.**

SUPPLEMENTAL GENERAL CONDITIONS

SUPPLEMENTARY CONDITIONS

Section 00820

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1. ENUMERATION OF PLANS, SPECIFICATIONS AND ADDENDA

Following are the Plans, Specifications and Addenda which form a part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents":

CONTRACT DRAWINGS

Exhibit A

CONTRACT SPECIFICATIONS

Exhibit B

ADDENDA

No. 1 Date: January 28, 2014

No. 2 Date: January 30, 2014

2. STATED ALLOWANCES

A. Pursuant to paragraph 36 of the General Conditions, the Contractor shall include the following cash allowances in the Bid:

- 1. Utility Relocation Allowance \$ 25,000.00
- 2. Testing Allowance \$50,000.00

3. NOTICE OF EXTENDED PAYMENT PROVISION

This contract allows the Owner to make payment within 21 (not to exceed 45 days) days after submission of an undisputed request for payment. (Section 57-28-5 B (2) NMSA 1978).

4. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY, AND PROPERTY DAMAGE INSURANCE

As required under paragraph 28 of the General Conditions, the policy shall be written for not less than the following or greater if required by law:

4.1 Worker's Compensation (including accident and occupational disease coverage):

- a. State Statutory
- b. Employer's Liability \$ 100,000 each accident
\$ 500,000 disease-policy limit
\$ 100,000 disease-each employee

4.2 Comprehensive General Liability (including Premises Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage):

- a. Bodily Injury \$ 500,000 per person
\$1,000,000 each occurrence
- b. Property Damage \$ 500,000 each occurrence
\$ 500,000 annual aggregate

c. Property Damage Liability Insurance shall provide X, C or coverage as applicable.

4.3 Comprehensive Automobile Liability:

- a. Bodily Injury \$ 500,000 per person
\$1,000,000 each occurrence

- b. Property Damage \$ 500,000 each
 occurrence
 \$ 500,000 annual
 aggregate

4.4 Umbrella Excess Liability: \$1,000,000 over primary insurance.

4.5 The Contractor shall either: (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his subcontractors in his own policy.

5. PHOTOGRAPHS OF PROJECT

As required by the Funding Agency, the Contractor will furnish photographs before construction, during construction and upon completion of the project.

6. SCHEDULE OF OCCUPATIONAL CLASSIFICATIONS AND MINIMUM HOURLY WAGE RATES.

Given on pages 112 through 119. Note: Applicable federal and state regulations require that the higher of the federal or the state wage rate for each classification must be paid. See Section 9 of the Additional Conditions.

7. BUILDER'S RISK INSURANCE

7.1 As provided in the General Conditions, Paragraph 28, the Contractor ☒ will ☐ will not* maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order 11246 of

insurable portions of the project for the benefit of the Owner, the Contractor, and all subcontractors, as their interests may appear.

(* Check one - to be filled in by Architect Engineer)

8. SPECIAL EQUAL OPPORTUNITY PROVISIONS - Executive Order 11246

A. Section 202 Equal Opportunity Clause

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union September 24, 1965, and by rules regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order

11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of the sentence immediately preceding paragraph 1. and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

B. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for Minority

Goals for Female

Participation: * % listed by County below

Participation: 6.9%

Bernalillo	38.3%	Catron	46.9%
Sandoval	"	Colfax	"
De Baca	"		
Chaves	49.0%	Guadalupe	"
Dona Ana	"	Lincoln	"
Eddy	"	Los Alamos	"
Grant	"	McKinley	"
Hidalgo	"	Mora	"

Luna	"	Rio Arriba	"
Otero	"	San Juan	"
Sierra	"	San Miguel	"
Santa Fe	"		
Lea	31.0%	Socorro	"
Roosevelt	"	Taos	"
Torrance	"		
Curry	11.0%	Valencia	"
Harding	"		
Quay	"		
Union	"		

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-Federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographic area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and

telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, County, and Municipality, if any).

C. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

a. *covered area* means the geographic area described in the solicitation from which this contract resulted;

b. *Director* means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. *Employer identification number* means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. *Minority* includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. When the Contractor, or any Subcontractor

at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective

bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provided written notification to minority and female recruitment sources and to community or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and what action was taken with respect to each such individual. If such

individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and female, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and females in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall not carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended.

D. Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

E. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

F. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the

regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 134, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

G. Section 504 Handicapped (if \$ 2,500 or over), Affirmative Action for Handicapped Workers

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2. The Contractor agrees to comply with the rules, regulations and relevant orders of the

Secretary of Labor issued pursuant to this Act.

3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to this Act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contractual understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance physically and mentally handicapped individuals.

6. The Contractor will include the provisions of this part in every subcontract or purchase order of \$2,500 or more unless exempted by the rules, regulation, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor and vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

H. Age Discrimination Act of 1975

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to Federal assisted construction contracts and related subcontracts exceeding

\$100,000).

Compliance with Air and Water Acts

A. During the performance of this contract, the Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

B. In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the Owner, the following:

1. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the "List of Violating Facilities" issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

2. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA "List of Violating Facilities".

4. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph a through d of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

10. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and Subcontractors shall comply with the provisions for the elimination of lead-base paint hazards under sub-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all Owners of public utility property of intention to use explosives at least eight hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Architect/Engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

11. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973.

12. ACCESS TO RECORDS AND MAINTENANCE OF RECORDS

The State grantor agency (funding agency), the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of six (6) years from the official date of close-out of the Grant.

13. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC

OFFICIALS

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

14. MINORITY AND FEMALE CONTRACTOR ASSOCIATIONS

Lists are available from various sources including the state Department of Transportation, the U.S.

Department of Housing and Urban Development, Ft. Worth Area Office. These lists are provided solely for the benefit of the Contractor for the purpose of assisting him/her in meeting the Equal Opportunity Provisions contained in these Supplemental General Conditions. The lists do not contain a complete listing of minority and female businesses. The information may in some cases be out of date.

15. SPECIAL HAZARDS

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

[If none, insert "none"]

MODIFICATIONS TO SUPPLEMENTAL GENERAL CONDITIONS

SUPPLEMENTARY CONDITIONS

Section 00820

***If the Architect/Engineer must make any modifications to the Supplemental General Conditions of this contract they must be included here.**

ADDITIONAL CONDITIONS

SUPPLEMENTARY CONDITIONS

Section 00830

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1. CONSTRUCTION INDUSTRIES LICENSING ACT

1.1 This Contract is subject to the provisions of the New Mexico Construction Industries Licensing Act (§§60-13-1 to 60-13-59 NMSA 1978), the rules and regulations of the New Mexico Construction Industries Commission and the rules, regulations and codes of the various trade boards adopted pursuant to the Construction Industries Licensing Act.

2. CONTRACT AUDIT

2.1 The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated Contract or subcontract other than a firm fixed-price Contract to the extent that such books and records relate to the performance of such Contract or subcontract. Such books and records shall be maintained by the Contractor for a period of six years from the date of final payment under the prime Contract and by the Subcontractor for a period of six years from the date of final payment under the subcontract unless a shorter period is otherwise authorized by the Owner in writing (§13-1-161 NMSA 1978).

3. ASSIGNMENT OF ANTITRUST CLAIMS

3.1 All contractor, suppliers, subcontractors agree that any and all claims which it may have or may inure to it for overcharges resulting from antitrust violations as to goods, services and materials purchased in connection with this Project are hereby assigned to the Owner and

the funding agency, but only to the extent that such overcharges are passed on to the Owner. It is agreed that the contractor, supplier, subcontractor or sub-subcontractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Owner, including the right to any treble damages attributable thereto.

4. BRIBES, GRATUITIES, AND KICKBACKS

4.1 It is illegal in this state for any public employee to solicit or accept anything of value in connection with award of this Contract and for any person to offer or pay anything of value to any such public employee (§§30-24-1 through 2 NMSA 1978).

4.2 Pursuant to §13-1-191 NMSA 1978 reference is hereby made to the criminal laws of New Mexico, including §§30-24-1 through 30-24-2, and §§30-41-1 through 30-41-3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities and violation of which constitutes a felony. Further, the Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

5. NON-RESIDENT CONTRACTOR'S REQUIREMENTS REGARDING GROSS RECEIPTS TAX SURETY BOND

5.1 Section 7-1-55A NMSA 1978 provides that any person (as defined in §7-1-3 NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts tax to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by §7-9-4 NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate, that the requirements of this paragraph have been met.

5.2 If the total sum to be paid under the contract is changed by ten percent or more after the date the

surety bond or other acceptable security is furnished, to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change (§7-1-55B NMSA 1978).

5.3 In addition to the above requirements, the Contractor will be subject to all the requirements of §7-1-55 NMSA 1978.

6. CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION

6.1 §7-10-4 NMSA 1978 provides that any person (as defined in §7-10-3 NMSA 1978) performing services for the state or its political subdivisions, as those terms are used in the Gross Receipts and Compensating Tax Act (§§7-10-1 through 7-10-5 NMSA 1978) must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department of the state to pay the gross receipts tax.

6.2 For information in obtaining the identification number contact: Revenue Processing Division, Taxation and Revenue Department, Manuel Lujan Sr. Building, 1200 St. Francis Drive, Santa Fe, New Mexico 87503, or call (505) 827-0825.

6.3 If any person who performs services for the State or its political subdivisions is not registered to pay the gross receipts tax, the Owner shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Division to pay the gross receipts tax.

7. CONTRACTS WITH NONRESIDENT PERSONS OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS, AGENT FOR SERVICE OF PROCESS

Special attention of Contractors is called to the requirements of §§13-4-21 through 13-4-24 NMSA

9.1 The Contractor warrants and agrees that he, all subcontractors and any further subcontractors will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act, §13-4-11 NMSA 1978. The attached Minimum Wage Rate Determinations are declared to be prevailing and apply to all construction. Note: Applicable federal and state regulations require that the higher of the federal or the state wage rate for each classification must be paid.

9.2 Submission of weekly payroll records to the

1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

8. SAFETY STANDARDS AND ACCIDENT PREVENTION

With respect to all work performed under this contract, the Contractor shall:

A. Comply with the safety standards provisions of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (P.L. 91-596), and the requirements of Title 29 of the Code of Federal Regulations, 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.

B. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.

C. Maintain at his/her office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

9. MINIMUM WAGE RATES

Owner and Department of Workforce Solutions is mandatory. Include the decision number on Contractor's and subcontractor's payrolls. The scale of wages must also be posted in a prominent location at the site.

9.3 In the event it is found by the Labor Commission, that any laborer or mechanic employed by the Contractor, subcontractor or any further subcontractors on the site of the project covered by this Contract, has been or is being paid as a result of a willful violation, a rate of wages less than the rate of wages required by


the Contract, the Owner may, by written notice to the Contractor, his subcontractor or any further subcontractors if the violation involves a Subcontractor, terminate their right to proceed with the Work or such part of the Work as to which there has been a willful failure to pay the required wages and the Owner may prosecute the work to completion by contract or otherwise, and the Contractor, subcontractor or any further subcontractor shall be liable to the Owner and the State of New Mexico for any excess cost occasioned thereby. If the Owner or State of New Mexico is unable to collect from the Subcontractor or any further Subcontractors, the Contractor will be liable for all costs.

10.1 The Contractor as an incidental cost shall provide, erect, and maintain for the duration of the construction project one identification sign at each construction site. The sign shall be painted on one side with a background color of yellow with red lettering of 3/4" thick, not smaller than 4' x 6' nor larger than 4' x 8', marine grade plywood. Each sign shall be mounted on two 4" x 4" posts, with the bottom of the sign at least four feet above grade. The sign shall be mounted level and at the location designated by the Architect/Engineer or the Owner's Project Manager. The sign shall be salvaged to the Owner at the end of the construction project.

10. PROJECT IDENTIFICATION SIGN

Sample Sign

Sign shall be yellow background with red letters

[21/2"]	(ENTITY)	[2"]	<p>NEW MEXICO COMMUNITY DEVELOPMENT COUNCIL PROJECT SUSANA MARTINEZ, GOVERNOR [3'] (PROJECT NAME)</p>		
			ARCHITECT	[1-1/2"]	CONTRACTOR
			(NAME)	[1-1/2"]	(NAME)
			(ADDRESS)	[1"]	(ADDRESS)
			(CITY, STATE, ZIP CODE)	[1"]	(CITY, STATE, ZIP CODE)
			(TELEPHONE N°. 505-000-0000)	[1"]	(TELEPHONE N°. 505-000-0000)
			OWNER	[1-1/2"]	FUNDING
			[ENTITY]	[1-1/2"]	CDBG GRANT - \$
[1-1/2"]	COUNCIL/COMMISSION		(ADDRESS)	[1"]	(DOT COOP GRANT - \$)
[1"]	(NAME), DISTRICT 1		(CITY, STATE, ZIP CODE)	[1"]	(CITY/COUNTY FUNDS - \$)
[1"]	(NAME), DISTRICT 2		(TELEPHONE N°. 505-000-0000)	[1"]	(TOTAL PROJECT COST - \$)
[1"]	(NAME), DISTRICT 3		(NAME), MANAGER	[1"]	
[1"]	(NAME), DISTRICT 4				
[1"]	(NAME), DISTRICT 5				
[1"]					

[1-1/2" wide red outline, with rounded corners (a), interior box]

11. OTHER ADDITIONAL CONDITIONS (list):

- 11.1 Federal Labor Standards Provisions
- 11.2 Attachments to Federal Labor Standards Provisions

MODIFICATIONS TO ADDITIONAL CONDITIONS

SUPPLEMENTARY CONDITIONS

Section 00830

*If the Architect/Engineer must make any modifications to the Additional Conditions of this contract they must be included here.

FEDERAL LABOR STANDARDS PROVISIONS
U.S. Department of Housing and Urban Development

HUD4010 (2-84) (HB 1344.1)

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the Provisions applicable to such Federal assistance.

A. 1.(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United State Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all time by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits were appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate). HUD or its designee shall refer the questions,

including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages or any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140 and 1215-0017).

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a

party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1). U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agency who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid in full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. (i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to any contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level or progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify

fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirement of Executive Order 11246, as amended and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements. The contractor shall comply with the requirements 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination; Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transaction", provides in part "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. A. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards employed in violation of the clause set forth in subparagraph (1) of the paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of four hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as

the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

HUD-1010.1 (2-76)

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS
SO-CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR

TITLE 18, U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C.,
sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

**SECTION 2 OF THE ACT OF JUNE 13, 1934, AS AMENDED (48 Stat. 948, 62 Stat. 862,
63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec 276c)**

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United State Code) shall apply to such statements.

—X X X—

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refers to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 - LABOR

Subtitle A - Office of the Secretary of Labor

**PART 3- CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC
WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE
UNITED STATES.**

Section 3.1 Purpose and Scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40

U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally assisted constructions that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" means all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which Federal assistance is limited solely to loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contracted relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies and instrumentalities.

Section 3.3 Weekly Statement with Respect to Payment of Wages

(a) As used in this section, the term "employees" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervision of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and shall be on form WH 348, "Statement of Compliance", or on an identical form on the back of WH 317, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[20 F.R. 93, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968]

Section 3.4 Submission of Weekly Statements and the Preservation and Inspection of Weekly Payroll Records.

(a) Each weekly statement required under section 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

Section 3.5 Payroll Deductions Permissible Without Application to or Approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as

Federal or State withholding income taxes and Federal social security taxes.

(b) Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employee, their families and dependents; Provided, however, that the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either (i) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commissions, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments; Provided however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under section 516.27(a) of this title shall be kept.

Section 3.6 Payroll Deductions Permissible with the Approval of the Secretary of Labor

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representative of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Section 3.7 Applications for the Approval of the Secretary of Labor

Any application for the making of payroll deductions under section 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of section 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8 Action by the Secretary of Labor Upon Applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of section 3.6; and shall notify the applicant in writing of his decision.

Section 3.9 Prohibited Payroll Deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Section 3.6 are prohibited.

Section 3.10 Methods of Payment of Wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11 Regulations Part of Contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see section 5.5(a) of the subtitle.

>

General Decision Number: NM140017 01/03/2014 NM17

Superseded General Decision Number: NM20130017

State: New Mexico

Construction Type: Heavy

County: Santa Fe County in New Mexico.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/03/2014

CARP1353-001 06/01/2012

	Rates	Fringes
CARPENTER.....	\$ 22.94	7.92

ELEC0611-014 01/01/2013		

	Rates	Fringes
Electrician		
Zone 1.....	\$ 29.90	9.70

ZONE 1: Mileage calculated from the main post office in the following towns: Albuquerque-40 miles, Belen-12 miles, Carrizozo-12 miles, Clovis-12 miles, Espanola-14 miles, Farmington-6 miles, Gallup-10 miles, Las Vegas-8 miles, Los Lunas-12 miles, Portales-12 miles, Ratan-6 miles, Roswell-12 miles, Ruidoso-12 miles, Santa Fe-10 miles, Tucumcari-6 miles.

ZONE 2: Extending up to 20 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 9% above Zone 1 rate.

ZONE 3: Extending up to 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 15% above Zone 1 rate.

ZONE 4: Extending more than 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 26% above Zone 1 rate.

* ENGI0953-005 04/01/2013

	Rates	Fringes
Power Equipment Operator		
(2) Forklift.....	\$ 19.23	5.64
(4) Bulldozer.....	\$ 19.54	5.64

SHAFT AND TUNNEL WORK - \$.15 per hour above regular rate.

HAZARDOUS PAY - The following pay shall be applicable for every hour an operating engineer is required by

governmental regulations and does wear special equipment for hazardous work at the designated levels. This is applicable in all three zones

LEVEL C - 10% above regular hourly wage

LEVEL B - 10% above regular hourly wage

LEVEL A - 15% above regular hourly wage

ZONE PAY The reference point for determining zone pay shall be from the intersection of Interstate Highway 25 and I-40.

Zone 1 - Albuquerque - 0 to 50 mile radius from I-40 shall be a Free Zone
 - Farmington - 0 to 50 mile radius of Farmington City Hall shall be a Free Zone

Zone 2 - Shall be \$2.50 per hour above base pay. Will apply outside of above parameters up to 35 miles.

Zone 3 - Shall be \$1.50 cents per hour above Zone 2 for a total of \$4.00 per hour and will apply after 35 miles of Zone one's parameters.

 SUNM2009-011 09/14/2010

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 16.53	1.95
IRONWORKER, REINFORCING.....	\$ 20.79	7.56
LABORER: Common or General.....	\$ 9.95	0.35
LABORER: Flagger.....	\$ 10.65	1.91
LABORER: Landscape.....	\$ 11.00	0.35
LABORER: Mason Tender - Cement/Concrete.....	\$ 12.46	0.00
LABORER: Pipelayer.....	\$ 13.60	0.00
OPERATOR: Backhoe.....	\$ 14.03	0.26
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.77	0.00
OPERATOR: Grader/Blade.....	\$ 18.56	0.00
OPERATOR: Loader (Front End)....	\$ 13.43	0.26
OPERATOR: Tractor.....	\$ 14.74	0.26
PAINTER: Brush, Roller and Spray.....	\$ 17.30	1.80
TRUCK DRIVER: Dump Truck.....	\$ 12.45	0.26

TRUCK DRIVER: Pickup Truck.....\$ 12.10	1.73
TRUCK DRIVER: Water Truck.....\$ 14.74	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have been found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007

5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

New Mexico Department of Workforce Solutions
Public Works
625 Silver Ave SW, Suite 410, Albuquerque, NM 87102
Phone: (505)-841-4400 fax to: (505) 841-4423 or Email to: public.works@state.nm.us

Wage Decision # **SF-13-1694 A**

NOTIFICATION OF AWARD (NOA)

THIS WAGE DECISION # EXPIRES FOR BIDS ON

04/25/14

Description and Location of Work: Greater Glorieta MDWCA Regional Improvements Phase I
Installation of approximately 4,300 LF of 8-inch waterline including fittings and joint restraints and appurtenances. Installation of new service connections with water meters and meter boxes equipped for remote meter reading. Installation of automated/remote water meter reading hardware and software. Installation of fire hydrants and appurtenances. Installation of 8-inch gate valves, the repairs of approximately 4,300 LF of asphaltic road work including but not limited to asphalt.

Village of Glorieta

County of Santa Fe

47 Fire Station Road

REMINDER for Agency Conducting BID Process: If bids are NOT submitted before new wage rates go into effect, a NEW wage decision WILL be required.

After the Contracting Agency awards this project the Wage Rate Poster and the Wage Rate Packet, excluding this NOA and Subcontractor List, must be delivered to the **GENERAL/PRIME CONTRACTOR**. The Contracting Agency or its agent must complete this form (including the next page listing all of the subcontractors including all tiers of subcontractors) and fax or mail it to the address above. **If the project is canceled**, this form must be completed by the Contracting agency conducting the bid process and the wording "Cancelled" written on the form and send to the Labor Relations Division. Failure to submit the NOA in a timely manner is a violation of paragraph 11.1.2.9.B (3) of the Public Works Minimum Wage Act Policy Manual.

General/Prime Contractor Company Name: _____ License#: _____

Address: _____ City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Project Contact's name: _____ E-Mail: _____

Approximate Date Work to Start: _____

Estimated Completion Date: _____

Estimated Cost of Project: _____

Bid Opening Date: _____

Note: The General/Prime Contractor **MUST** mail/fax in their Statement of Intent to Pay Prevailing Wages to the Contracting Agency or its agent before beginning work on the project. Each Subcontractor (and all tiers of subcontractors) **MUST** also mail/fax their Statement of Intent to Pay Prevailing Wages to the General/Prime Contractor 3 days after award of project. After work on the project is completed **and before, final payment**, is made to subcontractors and all tiers of subcontractors, the contractor and subcontractors must mail/fax their Affidavit of Wages paid to the Contracting Agency for final payment.

Signature for Contracting Agency (or agent) _____

Printed Name _____

Email address for Contracting Agency (not agent) _____ Required Field

Date _____

SUBCONTRACTOR LIST

DO NOT list suppliers or professional services (such as surveyors)
INCLUDE individual subcontractor dollar amount for project

Email to: public.works@state.nm.us or fax to: (505) 841-4423

Please include 2nd & 3rd Tier subcontractors. Make extra copies of form if necessary.

Wage Decision. # SF-13-1694 A

General Contractor:

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Amount (\$): _____

Greater Glorieta MDWCA Regional Improvements Phase I: **Wage Decision # SF-13-1694 A**

Installation of approximately 4,300 LF of 8-inch waterline including fittings and joint restraints and appurtenances. Installation of new service connections with water meters and meter boxes equipped for remote meter reading. Installation of automated/remote water meter reading hardware and software. Installation of fire hydrants and appurtenances. Installation of inch gate valves, the repairs of approximately 4,300 LF of asphaltic road work including but not limited to asphalt.

TYPE "A" - STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Effective January 1, 2013

Trade Classification	Base Rate	Fringe Rate
Bricklayer/Blocklayer/Stonemason	17.74	0.26
Carpenter/Lather	15.99	0.44
Cement Mason	15.52	0.26
Ironworker	21.77	6.03
Painter (Brush/Roller/Spray)	17.56	0.44
Electricians (outside)		
Groundman	26.79	11.03
Equipment Operator	29.61	11.03
Lineman/Wireman or Tech	30.20	11.03
Cable Splicer	31.38	11.03
Plumber/Pipefitter	28.30	4.07
Laborers		
Group I	13.73	0.35
Group II	14.03	0.35
Group III	14.43	0.35
Operators		
Group I	15.74	0.26
Group II	15.94	0.26
Group III	16.52	0.26
Group IV	16.54	0.26
Group V	16.53	0.26
Group VI	16.69	0.26
Group VII	16.74	0.26
Group VIII	16.89	0.26
Group IX	17.39	0.26
Group X	18.19	0.26
Truck Drivers		
Group I	13.32	0.26
Group II	13.52	0.26
Group III	13.72	0.26
Group IV	13.92	0.26

